

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE: SUBPOENA FOR INSPECTION  
AND SAMPLING OF PREMISES OWNED BY  
TYSON CHICKEN, INC.  
MATTER OF:.,

STATE OF OKLAHOMA, et al.  
Plaintiffs

VS

TYSON FOODS, INC., et al.,  
Defendants.

**FILED**

MAY 04 2006

William B. Guthrie  
Clerk, U.S. District Court

By \_\_\_\_\_  
Northern District of Oklahoma Deputy Clerk

Case No. 4:05-CV-00329-TCK-SAJ

MC 06-009-RAW

**TYSON CHICKEN, INC.'S OBJECTION TO AND MOTION TO QUASH  
PLAINTIFF'S SUBPOENA FOR INSPECTION AND SAMPLING OF PREMISES**

Separate Defendant Tyson Chicken, Inc. ("Tyson") submits the following as its Objection to and Motion to Quash Plaintiff's Subpoena for Inspection and Sampling of Premises<sup>1</sup>:

**I. INTRODUCTION**

On April 18, 2006, Plaintiff issued a subpoena pursuant to Federal Rule of Civil Procedure 45(a) requesting the inspection and sampling of certain real property and poultry farming operations located in Adair County, Oklahoma.<sup>2</sup> The Rule 45 subpoena at issue is directed to Hudson Farms, Inc. However, through a merger and series of name changes, Tyson is the current owner of the Subject Property.<sup>3</sup> Tyson leases the Subject Property to Steve Butler d/b/a Green Country Farms (hereinafter referred to as "Green Country Farms"). Green Country

<sup>1</sup>This Motion was also filed in the Eastern District of Oklahoma federal court as required by FED. R. CIV. P. 45(c)(2). A copy of the subpoena is attached hereto as Exhibit "1."

<sup>2</sup> The property at issue is more specifically described in a legal description contained within a deed attached as an exhibit to the subpoena. This property is referred to hereinafter as the "Subject Property."

<sup>3</sup> The Subject Property was deeded to Hudson Farms, Inc. by Danny and Arlene Smith in 1985. Hudson Farms, Inc. merged into Hudson Foods, Inc. in 1995. In 1998, Hudson Foods, Inc. merged with HFI Acquisition Sub, Inc., with HFI Acquisition Sub, Inc. being the surviving corporation. In 1998, HFI Acquisition Sub, Inc. changed its name to Hudson Foods, Inc. In 2000, Hudson Foods, Inc. changed its name to Tyson Chicken, Inc. Thus, Tyson Chicken, Inc. is now the owner of the Subject Property.

Farms operates several poultry farms on the Subject Property. Pursuant to a contract with Green Country Farms, Tyson places poultry on the Subject Property with said poultry being fed and cared for by Green Country Farms.

Tyson objects to Plaintiff's request for an inspection and sampling of the Subject Property and further moves the Court for an order quashing the subpoena. Plaintiff's subpoena lacks the particularity required by the Federal Rules of Civil Procedure regarding the time, place, and manner of inspection. Moreover, Plaintiff's request to conduct sampling on the Subject Property is an unfounded "fishing expedition" that will impose significant and undue burden upon Tyson.

## II. ARGUMENT AND LEGAL AUTHORITY

### A. Applicable Rules of Civil Procedure

While litigants are entitled to conduct reasonable and necessary discovery making full use of the various discovery devices afforded them under the Federal Rules of Civil Procedure, the right to conduct discovery is subject to certain limitations. As a general matter, litigants are not entitled to use discovery devices to annoy, harass or oppress a party or to impose upon a party the undue expense and inconvenience of responding to frivolous discovery requests. FED. R. CIV. P. 26(c). In this regard, the federal courts have inherent discretion to deny discovery when it is apparent that the party seeking the discovery has no good faith basis to support the discovery request and is instead involved in a "fishing expedition." *See, e.g., Koch v. Koch Indust., Inc.*, 203 F.3d 1202, 1238 (10<sup>th</sup> Cir. 2000) ("Plaintiffs' mere hope that they might find something on which to base a claim . . . [constituted] a fishing expedition" which the trial court had the inherent power to deny.)

In addition to the trial court's inherent powers to limit fishing expeditions disguised as discovery requests, there are several specific provisions of the Federal Rules of Civil Procedure

which are directly implicated by the Plaintiff's subpoena. For example, Federal Rule of Civil Procedure 45(c)(1) requires that "[a] party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." FED. R. CIV. P. 45(c)(1). If a party receiving a subpoena for the inspection of property serves a written objection within 14 days after service, then the inspection shall not occur "except pursuant to an order of the court. . . ." FED. R. CIV. P. 45(2)(B). Rule 45(c)(3)(A) further provides that "[o]n timely motion, the court by which a subpoena was issued **shall** quash or modify the subpoena if it . . . subjects a person to undue burden." FED. R. CIV. P. 45(c)(3)(A)(iv) (emphasis added).

This Court's decision on the present motion also requires consultation of Rule 34's provisions relating to the inspection of property. It is well-settled that "the scope of discovery under a subpoena is the same as the scope of discovery under Rules 26(b) and 34." *Goodyear Tire v. Kirk's Tire, Inc.*, 211 F.R.D. 658, 662 (Kan. 2003) (citing Advisory Committee Note to the 1970 Amendment of Rule 45(d)(1) and 9A Wright & Miller, *Federal Practice and Procedure*, § 2459 (2d ed. 1995)); see also *In re Cusumano*, 162 F.3d 708, 714 (1<sup>st</sup> Cir. 1998) (relying on 9A Wright & Miller, *Federal Practice and Procedure*, § 2452 (2d ed. 1992)). Thus, Federal Rule of Civil Procedure 34 and cases interpreting that rule are persuasive in this Court's determination of whether to quash Plaintiff's subpoena.

Federal Rule of Civil Procedure 34(a) "permit[s] entry upon designated land or other property . . . for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b)." FED. R. CIV. P. 34(a). A Rule 34 request must describe each item to be inspected with "reasonable particularity" and must "specify a reasonable time, place and manner of making the inspection." FED. R. CIV. P. 34(b).

## B. Undue Burden Standard

“The right of a party . . . to inspect and test, like all discovery, is not unlimited.” *Micro Chemical, Inc. v. Lextron, Inc.*, 193 F.R.D. 667, 669 (D.Colo. 2000). “[S]ince entry upon a party’s premises may entail greater burdens and risks than mere production of documents, a greater inquiry into the necessity for inspection would seem warranted.” *Belcher v. Bassett Furniture Industries, Inc.*, 588 F.2d 904, 908 (4<sup>th</sup> Cir. 1978). “[A]ny such invasion of property rights must, in the language of the Supreme Court, ‘be judged with care . . .’” *Id.* at 908, n. 12 (citing Wright & Miller, *Federal Practice and Procedure*, § 2040, at 286-187 (1970)).

Federal Rule 26(b)(2) provides that the Court may deny or limit discovery if it determines that “the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.” FED. R. CIV. P. 26(b)(2). “The determination of issues of burden and reasonableness is committed to the sound discretion of the trial court.” *Concord Boat Corporation v. Brunswick Corporation*, 169 F.R.D. 44, 49 (citing *Semtek Int’l, Inc. v. Merkuriy Ltd.*, 1996 WL 238538 at \*3; 9A Wright & Miller, *Federal Practice and Procedure*, § 2463); *see also Jones v. Hirschfeld*, 219 F.R.D. 71, 74 (S.D.N.Y. 2003).

In the context of Rule 45 subpoenas, the federal courts generally apply a balancing test in determining whether the subpoena at issue imposes an undue burden. “Whether a burdensome subpoena is reasonable ‘must be determined according to the facts of the case.’” *WIWA v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 815 (5<sup>th</sup> Cir. 2004); *see also Belcher*, 588 F.2d at 908 (“the degree to which the proposed inspection will aid in the search for truth must be balanced against the burdens and dangers created by the inspection.”). This requires that the Court consider the following factors:

- (1) the relevance of the information requested;
- (2) the need of the party for the information;
- (3) the breadth of the discovery request;
- (4) the time period covered by the request;
- (5) the particularity or specificity of the discovery request; and
- (6) the burden imposed.

*Id.* at 907; *see also American Elec. Power Co., Inc. v. U.S.*, 191 F.R.D. 132 (S.D. Ohio 1999); *Goodyear Tire v. Kirk's Tire, Inc.*, 211 F.R.D. 658, 663 (Kan. 2003) (stating that the “Tenth Circuit appears to recognize the balancing test for quashing a subpoena based upon undue burden.”). A court may find that a subpoena presents an undue burden when the subpoena is facially overbroad. *WIWA*, 392 F.3d at 815.

An even more stringent analysis is required when the sampling or testing results in an alteration of property. Rule 45 permits only “inspection of premises;” it does not contemplate that a person who issues and serves a subpoena will be able to modify the property in order to conduct discovery. In *Micro Chemical v. Lextron, Inc.*, the issue before the court was “whether [during testing] Micro Chemical may alter Lextron’s machine by substituting parts supplied by Micro in place of standard parts provided in the ordinary manufacture of the machine.” *Id.* The court denied Micro Chemical’s request, stating that “Micro Chemical has offered no evidence, by affidavit or otherwise, that the alterations create no risk of damage or easily can be accomplished.” *Id.* Similarly, in *State ex rel. Crawford v. Moody*, 477 S.W.2d 438, 440 (Mo.App. 1972), the appellate court reversed an order of the trial court requiring that defendants “either *remove, produce and deliver* to plaintiffs, or allow plaintiffs to *remove and take possession* of” an underground gas pipe involved in an explosion where removing the pipe would result in material disruption in the condition of a piece of real property.

C. Plaintiff's Request to Inspect and Sample the Subject Property is an Unfounded Fishing Expedition Which Imposes an Undue Burden on Tyson.

Plaintiff has not satisfied the heightened standard of inquiry to which a request implicating property rights should be subjected. Plaintiff has not demonstrated the necessity of the information they seek to obtain from their sampling, nor has Plaintiff shown any consideration for the property rights of Tyson or its lessee. Because the burden upon Tyson is substantial and the benefits, if any, of Plaintiff's proposed sampling are either non-existent or trivial, this Court should quash the subpoena.

As a preliminary matter it should be noted that Plaintiff's proposed inspection and sampling of the Subject Property presents a series of litigation-related events which Tyson, its experts and its attorneys will need to witness, monitor and document. Because the entire point of this exercise by Plaintiff is to develop evidence that it will later attempt to use to establish liability on the part of Tyson in this case, Tyson must have its attorneys and experts present at each and every inspection and sampling event that Plaintiff conducts on the Subject Property. Tyson's oversight and monitoring of these events will, of course, require the expenditure by Tyson of significant fees and costs associated with the involvement of its attorneys and experts.

Litigation expenses are, however, the least of the burdens imposed by Plaintiff's subpoena. Plaintiff's proposed sampling also unduly burdens Tyson's property interests by presenting serious risks of injury to the land, potential interference with the use of the land and the potential for adverse effects on the health of Tyson's flocks. According to the subpoena, Plaintiff intends to enter the poultry houses where Tyson's flock is present. Plaintiff also intends to take as many as 240 soil samples from various fields on the Subject Property. Additionally, Plaintiff intends to install groundwater monitoring wells "to allow repeated sampling of the groundwater." To stabilize these wells, Plaintiff intends to install "a small concrete pad . . .

around and over the pipe.” Plaintiff has also sought to reserve the right, if necessary, to bring an “auger drilling rig” onto the property to bore holes in the property in order to obtain groundwater samples. These sampling methods could cause substantial inconvenience to Tyson’s and/or the lessee’s use of the Subject Property and undoubtedly will have permanent effects on the condition of the Subject Property.

More importantly, Plaintiff has not agreed to follow appropriate biosecurity protocols during its proposed inspection and sampling of the Subject Property. Biosecurity protocols are of the utmost importance to Tyson. Access to the Subject Property without following proper biosecurity protocols, particularly by a person who has recently been on other poultry farms, presents a very real risk of the transmission of bird diseases which could seriously harm the health of the Tyson’s then-present or future-placed flocks. Matters of biosecurity are critical and must be addressed given the much discussed risks presented by diseases such as Avian Influenza (AI), Infectious Laryngotracheitis (LT) and Exotic Newcastle Disease (END). Furthermore, a bird disease outbreak on any of these farms could result in the condemnation of any infected flocks thus resulting in significant monetary damages to the Poultry Defendants.

Tyson and the other poultry company defendants have made several good faith attempts to address their biosecurity concerns through conversations and written communications with Plaintiff.<sup>4</sup> Although Plaintiff has expressed a willingness to implement certain biosecurity protocols which it believes should be adequate to protect against a bird disease outbreak, it has thus far refused to adhere to all of the biosecurity measures required under Tyson’s standing biosecurity policies. One example is Plaintiff’s refusal to incorporate the 72 hour waiting period currently applicable to farms under contract with Tyson. Because farms in the IRW are

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<sup>4</sup> The written communications between the parties on these subjects are attached hereto as Collective Exhibit 2. Counsel for Plaintiff and counsel for the poultry company defendants also held a meeting in Tulsa on April 26, 2006 to discuss biosecurity issues and protocols.

currently under a LT warning, Tyson's biosecurity policies prohibit the entry of farms under contract with Tyson by persons who have been on any other poultry farm within the previous 72 hours. (A true and correct copy of Tyson's written biosecurity policy is attached hereto as Collective Exhibit 3.)<sup>5</sup> Plaintiff's proposed biosecurity protocols do not incorporate this 72 hour rule and instead seek to limit the waiting period between farm visits to 48 hours. (*See* Ex. 2, May 2, 2006 Correspondence from Mr. Bullock to Mr. McDaniel.) Plaintiff's proposal presents undue and unacceptable risks of a bird disease outbreak.

The "undue" nature of the risks and burdens presented by Plaintiff's subpoena are even more apparent once those burdens are balanced against the non-existent or negligible "benefits" of Plaintiff's proposed inspection and sampling of the Subject Property. It is now clear that Plaintiff's subpoena is an unfounded fishing expedition embarked upon by Plaintiff without any good faith basis to believe that the inspection and sampling of the Subject Property will produce information relevant to Plaintiff's claims. The subpoena is based upon the unfounded assumption that "waste" (presumably a reference by Plaintiff to poultry litter) has been applied on the Subject Property. Plaintiff apparently bases this belief on the mere fact that poultry farming has occurred on the Subject Property. Of course, the mere presence of a poultry farm on a parcel of land does not mean that the parcel has also been fertilized with poultry litter. Some poultry farmers also raise cattle, hay or other crops and, therefore, benefit from the use of poultry litter to fertilize the pastures on their farms while other poultry farmers have no such fertilization needs for their property and, therefore, sell or give away poultry litter to third parties.

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<sup>5</sup> The LT warning in the IRW triggers the "Yellow Stage" protocols described in the Tyson and Cobb-Vantress biosecurity protocols. *See* Ex. 3. Plaintiff's recent offer to try to schedule sampling for time periods immediately after flocks are removed from these farms for slaughter, while gracious, does not remedy the Poultry Defendant's biosecurity concerns. LT, the disease of most concern at present, does not require physical contact with poultry for transmission. LT can also be transferred through contact with manure, feather and bedding if those items are contacted by a person in one poultry house and then inadvertently tracked into a subsequent poultry house.

Plaintiff was (or at least should have been) aware of the differing circumstances of poultry farmers with respect to the use of poultry litter before issuing the subpoena. In fact, this very issue was raised during the hearing conducted in the underlying action on March 23, 2006 when Magistrate Judge Sam Joyner inquired of Plaintiff's counsel as to how they planned to identify those fields which had actually received litter for the purpose of their proposed sampling. (*See* Ex. 4, Transcript of March 23, 2006 Hearing, p. 44.) In response, Plaintiff's counsel acknowledged their lack of specific knowledge at that time with respect to such matters but represented to the court that they could verify such facts (presumably before issuing subpoenas) either through visual observations or through communications with the defendants to this lawsuit. *Id.*<sup>6</sup>

It does not appear that Plaintiff has verified any history of actual litter applications with respect to the Subject Property. Certainly, Plaintiff has not asked Tyson about the history of litter applications on the Subject Property. Instead, Plaintiff has simply assumed that litter applications have occurred on the Subject Property and have arrogantly issued a subpoena demanding that they be taken to the "waste applied fields" on this parcel so they can take soil, run off and groundwater samples from such sites. As it turns out, no litter has been applied on the Subject Property for at least the last seventeen (17) years. *See* Ex. 5, Affidavit of Danny Partain at ¶¶ 4, 5. As is the case with many poultry farms, the litter generated from this farm has historically been given or sold to third parties. *Id.* at ¶5. Thus, Plaintiff's request to take soil samples, run-off samples, and groundwater samples from "waste applied fields" is futile with respect to the Subject Property. There simply are no fields on the Subject Property to which

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<sup>6</sup> To the extent that Plaintiff intends to identify poultry litter application areas through on-site interrogations of the managers or employees of the lessee, Green Country Farms, such a practice is clearly not permitted pursuant to a Rule 34 or Rule 45 inspection. *See Belcher*, 558 F.2d at 908 (reversing lower court's order permitting interrogation of plant employees by plaintiff's expert during Rule 34 inspection.)

litter has been applied; at least not in recent years. Consequently, the requested samples cannot be taken.

In light of the foregoing, this Court should find that Plaintiff's subpoena presents an undue burden to Tyson. The burdens of having to monitor (both with attorneys and experts) the extensive and continuing sampling of property where litter has not even been applied and the risk of injury to the real and personal property interests of Tyson clearly outweigh the benefits, if any, to the Plaintiff from the proposed inspection and sampling. Consequently, the Court should quash Plaintiff's subpoena.

D. Plaintiff's Subpoena Does Not Meet the Specificity Requirements of Rules 34 and 45.

The undue burden upon Tyson is exacerbated by Plaintiff's failure to abide by the time, place and manner specificity requirements of Rules 34 and 45 and the continuing nature of the subpoena. Rule 45 states that "[e]very subpoena shall command each person to whom it is directed . . . to permit inspection of premises, at a **time and place therein specified.**" FED. R. CIV. P. 45(a)(1)(C) (emphasis added). Rule 34's provisions regarding inspection requests impose a similar obligation by requiring that the requesting party describe with reasonable particularity the items to be inspected and "specify a reasonable time, place, and manner of making the inspection and performing the related acts." FED. R. CIV. P. 34(b). Plaintiff's subpoena is deficient under both Rules 34 and 45.

First, the subpoena does not specifically identify the *place* where the proposed inspection or sampling would occur. The Subject Property is comprised of 80 acres of land on which 30 poultry houses and at least 3 residences are situated. The only "location" identified in Plaintiff's subpoena is the legal description for the entire 80 acre tract. The sampling request attached as an exhibit to the subpoena suggests that the bulk of the inspection and sampling would occur on "waste applied fields." However, the subpoena fails to identify the location of such fields.

Furthermore, as explained above, if by use of the phrase “waste applied fields” Plaintiff means poultry litter application sites, then it appears that no site on the Subject Property actually fits the vague description provided by Plaintiff.

Second, the subpoena fails to provide any specificity with respect to the “*manner of making the inspection and performing the related acts.*” FED. R. CIV. P. 34(b). While Plaintiff has generically described the type of samples they intend to collect (i.e. soil, groundwater, surface water and litter), they have refused to specify the “related acts” they intend to perform on these samples. For example, with respect to surface water run-off samples and the groundwater samples, Plaintiff have recently advised the Tyson that “[o]ur decision concerning how and what to test for and how to preserve the water for testing are our attorney work product and the decisions are therefore privileged.” *See* Ex. 2, May 2, 2006 Correspondence from Mr. Bullock to Mr. McDaniel, p. 2.<sup>7</sup> Plaintiff has presented no justification for their apparent desire to secretly conduct testing of samples gathered under the auspices of the discovery provisions of the Federal Rules of Civil Procedure. Tyson needs to know what constituents the Plaintiff is testing for so that they can properly evaluate Plaintiff’s proposed sampling collection and preservation methods and make arrangements to obtain and test proper field split samples in order to evaluate and perhaps discredit the results that Plaintiff’s may report from their sampling campaign.<sup>8</sup>

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<sup>7</sup> With respect to soil and litter samples, Plaintiff provided for the first time on May 2<sup>nd</sup> a list of the constituents for their experts *initially recommended testing*. *See* Ex. 2, May 2, 2006 Correspondence from Mr. Bullock to Mr. McDaniel, p. 2. Tyson is still reviewing the “work plan” provided by Plaintiff as an attachment to this letter but notes for the Court that Plaintiff seeks to “reserve the right at any time to change, without notice to you [Tyson] what we test the samples for and the method or manner in which we handle our part of the sample[s].” *Id.*

<sup>8</sup> Plaintiff has refused to agree to provide Tyson with field split samples for testing and instead have demanded that Tyson accept composited samples prepared by Plaintiff’s laboratory. (*See* Ex. 2, May 2, 2006, correspondence from Mr. Bullock to Mr. McDaniel.) Tyson believes that the standard sampling approach of gathering field split samples is necessary to ensure that Tyson can properly evaluate and potential refute the results to be reported by Plaintiff.

Plaintiff's subpoena and their continuing refusal to disclose information relating to the manner of the proposed sampling and the tests to be conducted on samples collected violate the specificity requirements of Rules 34 and 45.

Finally, and perhaps most significantly, Plaintiff's subpoena is defective because it does not identify with any degree of specificity the dates and times on which Plaintiff seeks to inspect or sample the Subject Property. Although the face of the subpoena indicates that the inspection would occur on "May 5, 2006 @ 9:00 a.m.," a review of the "sampling request" attached as an exhibit to the subpoena reveals that this is merely the date and time of the *first of many different sampling events* which Plaintiff seeks to compel pursuant to this subpoena. The sampling request attached states that rainfall runoff samples "will be conducted *from time to time through June 30, 2006 as rainfall events occur.*" Plaintiff also apparently intends to repeatedly access the property in order to collect "grab samples" from groundwater monitoring wells they intend to construct on the Subject Property. Here again, no schedule for this access and collection is provided by Plaintiff's subpoena. Plaintiff, under the current subpoena, seeks the right to access the Subject Property at any time, as many times as it wishes, for a period of at least two months. Clearly, such access would impose a significant burden upon the property owner. Tyson, as the owner of the Subject Property has a right to notice that the Subject Property will be accessed and sampled *at a particular time.* See FED. R. CIV. P. 45(a)(1)(C) and 34(b). Plaintiff's subpoena fails to provide such notice.

The request for a continuing right to access the Subject Property at unspecified times presents practical problems which could create substantial prejudice to Tyson's ability to defend against the data Plaintiff's experts hope to collect in these sampling events. Tyson is entitled to have its experts and attorneys present to observe and properly documents these sampling events.

In the absence of properly scheduled sampling events, Tyson may be unable to mobilize their attorneys and experts to observe the periodic sampling undertaken by Plaintiff.

Because the subpoena does not specify the location, time, frequency, or manner of the sampling to be performed, it is defective under Rules 34 and 45. Consequently, this Court should quash the subpoena.

E. Alternatively, the Court Should Place Conditions Upon the Inspection and Sampling and Should Require Plaintiff to Post a Bond Sufficient to Indemnify Tyson.

In the event that this Court does not find reason to quash Plaintiff's subpoena, Tyson requests the entry of an order pursuant to FED. R. CIV. P. 45(c) establishing certain conditions for Plaintiff's inspection and sampling of the Subject Property. Specifically, Tyson request the entry of a protective order requiring Plaintiff and its lawyers and experts to strictly adhere to all of Tyson's biosecurity policies and measures described in Exhibits 2 and 3 *in addition to* those biosecurity policies proposed by Plaintiff pursuant to Mr. Bullock's May 2, 2006 letter. (See Ex. 2.) Furthermore, this Court should require, as a condition precedent to any inspection and sampling of the Subject Property, that Plaintiff post a bond in an amount sufficient to indemnify Tyson for any damages caused to the real property or to the poultry flocks in the course of inspection and sampling.

"Because a federal court has the inherent power to protect anyone from oppressive use of process, the court may require a plaintiff to demonstrate that he has made provisions for the costs of discovery prior to ordering the Clerk to issue subpoenas." *Gregg v. Clerk of United States District Court*, 160 F.R.D. 653, 654 (N.D. Fla. 1995) (citing *Badman v. Stark*, 139 F.R.D. 601, 604 (M.D. Penn. 1991)). In the context of invasive inspection or sampling of property, the Oklahoma federal courts have in past required the party requesting such discovery to post a bond sufficient to indemnify the property owner from any damages caused. In *Williams v. Continental*

*Oil Co.*, the United States District Court for the Western District of Oklahoma imposed a bond requirement as a condition to a party's request to conduct a subsurface directional survey of another party's oil well. 14 F.R.D. 58 (W.D. Okla. 1953). There, the court stated:

The cases uniformly agree that where a survey is ordered the complete risk and hazard, if any, must be borne by the plaintiff; the defendant cannot be submitted to possible loss. Without exception the plaintiff must post a bond sufficient to hold the defendant harmless.

*Id.* at 66. The importance of providing security for potential damage caused by proposed testing was also discussed by the court in *Micro Chemical v. Lextron, Inc.*. In that case, the court took into consideration in its denial of Micro Chemical's request to alter the piece of equipment to be tested the fact that "Micro Chemical has neither made nor offered any provision for security in the event of damage to the machine or other loss which may be suffered by Lextron if the alteration of the machine were ordered." *Micro Chemical*, 193 F.R.D. at 669.

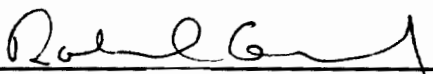
Clearly, this Court has the power to ensure that Plaintiff takes responsibility for all damages that might be caused by its sampling. Thus, this Court should require Plaintiff to post a bond prior to the commencement of sampling in an amount sufficient to cover any foreseeable damages that may be inflicted upon Tyson's real property or upon its flocks as a result of the proposed inspection and sampling.

### III. CONCLUSION

For the foregoing reasons, Separate Defendant Tyson Chicken, Inc. requests that this Court quash Plaintiff's subpoena. Alternatively, Tyson requests that the subpoena be modified by the Court to require that Plaintiff comply with proper biosecurity measures in carrying out their sampling and that Plaintiff be required to post a bond to indemnify Tyson from any damages that result from the sampling.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT,  
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**CERTIFICATE OF SERVICE**

I hereby state that I have caused to be served via Federal Express, a true and correct copy of the above and foregoing, on this 3rd day of May 2006, to:

W. A. Drew Edmonson Attorney General State of Oklahoma 2300 N. Lincoln Blvd., Ste. 112 Oklahoma City, OK 73105
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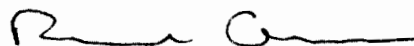
And I hereby state that I have caused to be served via first class U.S. Mail, a true and correct copy of the above and foregoing, on this 3rd day of May 2006, to:

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Douglas L. Boyd 1717 E. 15 <sup>th</sup> Street Tulsa, OK 74104	Robert Park Medearis, Jr. 226 W. Choctaw St. Tahlequah, Oklahoma
Jennifer S. Griffin LATHROP & GAGE, L.C. Buttonwood Office Building, 3610 Buttonwood Drive, Suite 200 Columbia, Missouri 65201	Michael T. Hembree HEMBREE LAW FIRM P.O. Box 1839 Tahlequah Ok 74464
Marcus N. Ratcliff Kenneth E. Wagner LATHAM, STALL, WAGNER, STEELE & LEHMAN 1800 S. Baltimore, Ste. 500 Tulsa, OK 74119	J. Stephen Neas Ryan P. Langston J. Stephen Neas LOGAN & LOWRY, LLP P.O. Box 558 Vinita, OK 74301
Monte W. Strout 209 W. Keetoowah Tahlequah, OK 74464	Angela D. Cotner 505 Gray Fox Run Edmond, OK 73003
C. Craig Heffington 20144 W. Sixshooter Rd. Cookson, OK 74427	Kenneth and Jane Spencer Route 1, Box 222 Kansas, OK 74347
James C. Geiger Route 1, Box 222 Kansas, OK 74347	Robin Wofford Rt. 2, Box 370 Watts, OK 74964
Lloyd E. Cole, Jr. 120 W. Division Street Stilwell, OK 74960	Linda C. Martin N. Lance Bryan Doerner, Saunders 320 S. Boston Ave., Ste. 500 Tulsa, OK 74103
James R. Lamb D. Jean Lamb STRAYHORN LANDING Rt. 1, Box 253 Gore, OK 74435	Richard E. Parker Donna S. Parker BURNT CABIN MARINA & RESORT, LLC 34996 S. 502 Road Park Hill, OK 74451
Gordon and Susann Clinton 23605 S. Goodnight Lane Welling, OK 74471	David A. Walls WALLS WALKER HARRIS & WOLFE, PLLC Union Plaza, Suite 500 3030 N.W. Expressway Oklahoma City, OK 73112-5434

William B. Federman  
Jennifer F. Sherrill  
FEDERMAN & SHERWOOD  
120 n. Robinson, Suite 2720  
Oklahoma City, OK 73102

A handwritten signature in black ink, appearing to read "Robert W. George", written over a horizontal line.

Robert W. George

FD-2088 (Rev. 1-94) Subpoena in a Civil Case

CM 820  
APR 18 2006Issued by the  
UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

OKLAHOMA

State of Oklahoma, Inc., et al.

V.

Tyson Foods, Inc. et al.

## SUBPOENA IN A CIVIL CASE

Case Number: 4:05-CV-00329-TCK-SAJ

No. Dist. Okla.

TO: Hudson Farms, Inc.  
c/o The Corporation Company  
735 First National Building  
Oklahoma City, Ok 73102

- ☐
- YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐
- YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☐
- YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

- ☒
- YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

The attached legal description and Sampling Request

DATE AND TIME

May 5, 2006 @ 9:00 a.m.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorney for Plaintiff

April 13, 2006

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Richard T. Garren, OBA #3253, 502 W 6th St Tulsa, Ok 74119

918/587-3161

(See Rule 45, Federal Rules of Civil Procedure, Parts C &amp; D on next page)

If action is pending in district other than district of issuance, state district and case number



AO 331 (Rev. 1/94) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

## Rule 45, Federal Rules of Civil Procedure, Parts C &amp; D:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or  
(iv) subjects a person to undue burden.

## (B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the non-demanding party to contest the claim.

## WARRANTY DEED

(Statutory Form)

FILED  
ADAIR COUNTY, STILLWELL, OK.

JUL 19 1985

KNOW ALL MEN BY THESE PRESENTS:

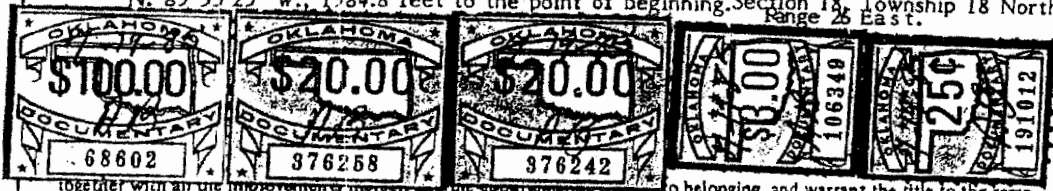
THAT Danny Smith and Arlene Smith, husband and wifeIN BOOK 221 PAGE 25 MINUTE  
By AARON L. BARTON, County Clerk Deputypart ies of the first part, in consideration of the  
sum of One and no/100 dollars,

and other valuable considerations, in hand paid, the receipt of which is hereby acknowledged, do

hereby grant, bargain, sell and convey unto HUDSON FARMS, INC.part y  
of the second part, the following described real property and premises situate in ADAIR

County, State of Oklahoma, to-wit:

The E $\frac{1}{2}$  of SE $\frac{1}{2}$  of NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  and the North 813 feet of the NW $\frac{1}{4}$  of SE $\frac{1}{2}$  and the North 813 feet of the East 506 feet of the E $\frac{1}{2}$  of NE $\frac{1}{2}$  of SW $\frac{1}{4}$  and that part of the E $\frac{1}{2}$  of NE $\frac{1}{2}$  of NW $\frac{1}{4}$  and that part of the NW $\frac{1}{4}$  of NE $\frac{1}{2}$  described as follows: Beginning at the SW corner of said E $\frac{1}{2}$  of NE $\frac{1}{2}$  of NW $\frac{1}{4}$ , thence N. 0°09'W., 4.00 feet; thence N. 88°38'14" E., 661.79 feet; thence N. 88°53'51" E., 1323.45 feet; thence S. 0°05'59" E., 49.00 feet to the SE corner of said NW $\frac{1}{4}$  of NE $\frac{1}{2}$ ; thence N. 89°53'25" W., 1984.8 feet to the point of beginning. Section 18, Township 18 North, Range 26 East.



together with all the improvements thereon and the appurtenances thereto belonging, and warrant the title to the same.

TO HAVE AND TO HOLD said described premises unto the said part y of the  
second part, its heirs and assigns forever, free, clear and discharged of and  
from all former grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature.

Signed and delivered this 17<sup>th</sup> day of July, 19 85

*Danny Smith*  
*Arlene Smith*

STATE OF OKLAHOMA

COUNTY OF ADAIR

SS:

INDIVIDUAL ACKNOWLEDGEMENT  
(Oklahoma Form)Before me, the undersigned, a Notary Public, in and for said County and State, on this 17<sup>th</sup> day ofJuly, 1985, personally appearedDanny Smith and Arlene Smith, husband and wife

to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that they  
executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My commission expires 9/12/87STATE OF OKLAHOMA  
COUNTY OF ADAIR

I hereby certify that the within and foregoing instrument is a true and correct copy of the records as shown in the office of the County Clerk in and for Adair County.  
Dated this 17<sup>th</sup> day of July, 1985.  
By Aaron L. Barton County Clerk

Compliments of Chicago Title Insurance Company.

4

#### **Waste Samples from Productions Facilities (Poultry Houses)**

A total of 18 samples of waste will be collected from each house. The samples will be collected at regular intervals covering the total length of the facility using a zigzag pattern. Both litter and cake samples will be collected. A steel spade will be used to collect the samples and place them in a plastic bag contained inside a 5 gallon bucket. After collection of all the samples, the bag and bucket will be sealed. All sampling equipment and reusable personnel equipment will be decontaminated using water, phosphate free soap and 6 percent bleach.

#### **Soil Samples from Waste Applied Fields**

Equipment and personnel will be transported to the field in a truck or van. At each field between one and four sampling areas will be identified. Each of the sampling areas will be between one and ten acres in size. At each sampling area, a regular grid pattern of 20 sample locations will be established. At each of the 20 sampling locations, individual soil samples will be collected at three depths: 0 to 2 inches, 2 to 4 inches, and 4 to 6 inches. Individual samples will be placed in plastic bags with labels. All sampling equipment and reusable personnel equipment will be decontaminated between fields using water, phosphate free soap and 6 percent bleach.

#### **Rainfall Runoff Samples**

At or near the edge of fields where waste has been applied, rainfall runoff sampling locations will be selected. These locations will typically be low or sloped areas where water will runoff or accumulate. Where runoff water accumulates in a natural depression, the water may be sampled directly from these locations. Rainfall runoff sampling will be conducted from time to time through June 30, 2006 as rainfall events occur.

#### **Groundwater Samples**

Samples of groundwater will be collected using a hydraulic pushed sampling device (probe) mounted on the back of a van or truck. The small diameter probe (usually about two inches in diameter) will be pushed into the subsurface at selected locations on or near the edge of fields where waste has been applied. Groundwater will be collected using a small pump or by inserting a small tube inside the probe. At selected locations (up to three per field), a plastic pipe will be placed in the probe hole to allow repeated sampling of the groundwater. To stabilize the pipe, a small concrete pad will be placed around and over the pipe. If requested by the owner, the pad and pipe will be flush with the ground surface. If the probe cannot penetrate the subsurface, an auger drilling rig may be used. Upon completion the ground will be restored to preexisting condition. Grab sample method will be used to gather data from existing wells or springs using scientifically accepted collection procedures.



Attorneys and Counselors

May 2, 2006

A. Scott McDaniel  
Joyce Paul & McDaniel PC  
1717 S Boulder Ste 200  
Tulsa OK 74119-4833

Via email to: [smcdaniel@jpm-law.com](mailto:smcdaniel@jpm-law.com)

Jay Thomas Jorgensen  
Sidley Austin Brown & Wood LLP  
1501 K Street NW  
Washington DC 20005

Via email to: [jjorgensen@sidley.com](mailto:jjorgensen@sidley.com)

Re: *State of Oklahoma v. Tyson et al.*,  
No. 05-CV-0329-JOE-SAJ

Dear Scott and Jay:

In light of the two of you having taken the lead in proposing modifications to Plaintiff's Biosecurity Guidelines, this letter is addressed to the two of you and copied to counsel for the other Defendants concerning the procedures that will govern sampling under court issued subpoenas.

At the April 25 meeting, Plaintiff proposed that the parties work together so as to minimize occasions when our scientists and technicians come into contact with live poultry while sampling in the poultry barns. It is our recommendation that the companies let us know when they are scheduled to pick up a flock. With the cooperation of the growers, we can also be told which of the facilities is slated for an annual clean out or a cake out. With such cooperation we can collect waste samples after the birds have been taken for slaughter and before the waste leaves the barn to be disposed of on a field. By working together in this manner, we can increase biosecurity for this project.

As was mentioned by the Integrators during our meeting, the biosecurity concerns regarding the catching operation are significantly different than they are during other times in the growing cycle. It was acknowledged that since the birds are slated for slaughter at that point, the concerns that the catchers might contaminate them were not substantial. Our proposal is designed to limit occasions when it is necessary for us to enter a poultry barn to gather samples while there are birds in the barn. Since under such circumstances our scientist would not enter the barn until the birds were gone and would then be sampling waste that was itself slated to be disposed of by being spread on fields, contamination of the birds is remote.



May 2, 2006

Page 2

This proposal is made to enhance the biosecurity procedures to which the parties have agreed. Attached you will find the biosecurity protocol agreed to at our April 26<sup>th</sup> meeting. These protocols, coupled with our working together to make it possible to do the sampling when the birds are out of the houses, will provide a level of biosecurity beyond anything practiced in the industry. It is our hope that we can work together on this and meet the reasonable needs of all parties. Please let us know if the Integrators are interested in cooperating in this manner. There was some suggestion that the Integrators might have additional procedures that they may seek to impose. If any of the companies have additional procedures, we need to see them now. Such procedures should be accompanied by copies of the actual procedures and the date that they were issued.

I have attached the Work Plan for the soil and litter sampling. Since the Work Plan contains information about the testing program which is being conducted by the lawyers for the State, it is attorney work product and is therefore privileged. But for that fact that the State previously produced an earlier version of this plan as part of the discovery in the State court action, we would not be providing this to you at this time. Consistent with this, we reserve the right at any time to change, without notice to you, what we test the samples for and the method or manner in which we handle our part of the sample once the split is made. On the other hand, since we have offered to split samples with you, should we at anytime decide that it is important that we change the manner in which the samples are collected or handled before your portion of the split is delivered to you, you will be informed of such a change.

Regarding splitting soil and litter samples, we have reviewed your request that a split be made in the field. In light of our procedures for collecting the samples and the importance of all samples being fully composited prior to being split, it will not be possible for us to make a split in the field. If in fact you need a sample at the time of the sampling, you will need to bring your own team and collect your own samples.

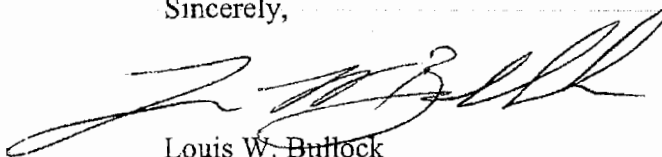
You have inquired concerning how many teams will be dispatched to take samples. It is our present plan to field two teams of three scientists/technicians each to take the samples. They will be accompanied by a photographer and videographer, as well as a lawyer. The number of teams dispatched may be changed depending on how we arrange the schedule.

We were also asked to share with the Defendants our procedures for preserving and analyzing any water samples which might be taken. I have reviewed this, and it remains our view that it is not our task to direct your scientific investigation. Our decision concerning how and what to test for and how to preserve the water for testing are our attorney work product and the decisions are therefore privileged. Consistent with this, the Integrators will need to determine how large a water sample they need and how to preserve that sample for later testing.

If you have any questions concerning these matters, please let us know.

May 2, 2006  
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "L. Bullock", written over a horizontal line.

Louis W. Bullock

Attachments

- (1) Agreed Biosecurity Guidelines
- (2) Sampling Protocol

Electronic copies: Counsel of record  
Ken Williams  
Michael Graves

## **AGREED BIOSECURITY GUIDELINES**

*IT IS STRONGLY RECOMMENDED THAT ALL PERSONS VISITING POULTRY FACILITIES FOR SOIL AND LITTER TESTING UNDERGO TRAINING ON BIOSECURITY PROTOCOLS AND PROPER USE OF PERSONAL PROTECTION EQUIPMENT*

The steps you take entering a premise makes a difference and can have a significant impact on the well being of the operation. It is important to follow proper Biosecurity measures because poultry, animal and plant diseases are spread in numerous ways between farms and ranches including through human contact and vehicle movement.

- 1) Contact farm owner or their lawyer prior to visit – review recent disease/bird loss/vaccination, review and follow their biosecurity guidelines.
- 2) Prepare your supplies, clothing, equipment and vehicle before your visit.
  - Commercial car wash your vehicle before the farm visit
  - Disposable coveralls (TYVEK).
  - Disposable boot covers (2 pair) and rubber boots.
  - Task suitable disposable gloves.
  - Hair cover and facemask.
  - Long handled scrub brush and foot bath to clean/disinfect boots.
  - Suitable disinfectant (10% Bleach, Vircon) mixed as directed.
  - Bucket or container to mix disinfectant solutions.
  - Water for mixing
  - Hand held sprayers to clean/disinfect vehicle tires.
  - Trash bags and ties.
  - Waterless disinfectant hand wash
- 3) Keep samples, used equipment, etc. separate from clean supplies in your vehicle (double trash bagged).
- 4) DO NOT DRIVE ONTO POULTRY PREMISE IF AT ALL POSSIBLE.
- 5) Park at gate or facility entrance if at all possible. (100 feet from poultry house)
- 6) Wear TYVEK coveralls, rubber boots, 2 pair disposable boot covers, disposable gloves, facemask, and hair cover.  
\*REMEMBER ALL MUD AND ORGANIC MATERIAL MUST BE CLEANED FROM TIRES AND BOOTS FOR DISINFECTANTS TO WORK.
- 7) Carry/use the minimum amount of equipment/supplies required to do the job.
- 8) When finished – Clean and disinfect equipment, clipboards, etc.
- 9) Double bag samples to prevent contamination of vehicle/equipment/other farms.

- 10) Place all used TYVEK, boot covers, gloves, and trash in a trash bag when finished, double bag, and leave for disposal on the premise.
- 11) Clean all mud and organic material from your vehicle and tires, then properly spray with disinfectant.
- 12) Wash hands with waterless disinfectant.
- 13) If multiple operations of a single Defendant are to take place in succession, sequence the visits to all of the operations under contract with a single Defendant in the following order: (1) any breeder pullet operations; (2) any breeder hen operations; (3) then broiler operations.
- 14) Provide a minimum of 48 hour delay between moving from any operation owned, leased by, or under contract with one Defendant to the operation owned, leased by, or under contract with another Defendant.
- 15) Provide a minimum of 48 hour delay between exposure to any live fowl, including any operation owned, leased by, or under contract with any Defendant, and any operation under contract with Willow Brook Foods.
- 16) Provide a minimum of a 7 day delay between contact with any live fowl, including any operation owned by or under contract with any Defendant, and any operation owned, leased by, or under contract with Cobb-Vantress, Inc.
- 17) Defendants may have their own representatives on site at the facility any time a visit occurs pursuant to the service of process. This includes client representatives, attorneys and/or technical consultants.



**Joyce, Paul &  
McDaniel, PLLC**  
Attorneys & Counselors

1717 S. Boulder Ave., Ste. 200  
Tulsa, Oklahoma 74119-4833

April 27, 2006

*(Via Facsimile and E-Mail)*

M. David Riggs  
Riggs, Abney, Neal Turpen, Orbison & Lewis  
502 West Fifth Street  
Tulsa, Oklahoma 74119

Re: *Oklahoma, et al. v. Tyson, et al.*, Case No. 05-CV-329-TCK-SAJ,  
Pending in the United States District Court for the Northern  
District of Oklahoma

**Defendants' Amended Response to Proposed Biosecurity  
Protocols, and Requirements for Sampling**

Dear David:

As a follow up to our meeting Tuesday, you requested that the defense counsel provide you with clarification of their clients' biosecurity requirements and an enumeration of their expectations with regard to the sampling you contemplate performing on the private lands, which are the subject of Plaintiffs' subpoenas.<sup>1</sup>

**1. Biosecurity**

The Defendants offer this response to the Plaintiffs' proposed biosecurity protocols to be employed if and when representatives of the Plaintiffs are afforded access to any facility upon which any poultry owned by any of the Defendants is housed or raised. This response is tendered without prejudice to their rights to request and seek the enforcement of additional biosecurity protocols in the event of disease breakout, a change in circumstances, or incidences of protocol violations. The Defendants also offer their response in recognition that prior to the grant of any access to any of the aforementioned

---

<sup>1</sup> It is noteworthy that the Defendants provided you their response to the Plaintiffs' proposed biosecurity protocols on March 31, 2006 as required by Judge Joyner, yet you never responded, nor did you express any concerns or disagreement with the Defendants' response until our meeting on April 26.

April 27, 2006

Page 2 of 5

facilities that are owned by non-parties to the litigation, those non-parties may request that the Court impose additional or alternative procedures, which cannot be raised until such time as the farms to be entered have been identified and the owners have the opportunity to be heard.

Initially, we note that Item No. 1 of Plaintiffs' proposed protocols provides that all persons entering the operation will adhere to the biosecurity protocols currently in effect. Plaintiffs' adoption of and agreement to comply with existing protocols at each operation addresses many of the Defendants' concerns. Therefore, we propose that if the Court grants the right of access to any specifically-identified operation, the Defendant who owns the poultry at the operation may elect to provide you with the applicable biosecurity policies and procedures. If the property owner has additional procedures in place, we assume those will be shared with you in advance as well.

The Defendants request that the Plaintiffs and their representatives agree to the following additional provisions:

- The sequencing of the farm sampling should be structured so that a sampling team will visit all of the growing operations under contract with a single Defendant before moving to the next. For example, if a sampling team commences with an operation under contract with Defendant A, any additional operations under contract with Defendant A will be completed before moving to an operation under contract with Defendant B. The intent of this requirement is to prevent a single sampling team from moving back and forth between farmers' facilities housing poultry owned by different Defendants, which markedly increases the risk of disease transmission. Under the prior example, if a situation were to arise requiring the sampling team to return to an operation under contract with Defendant A, it will simply need to adhere to the 48-hour waiting period described below.
- Sequence the visits of a sampling team to all of the operations under contract with a single Defendant in the following order: (1) any breeder pullet operations; (2) any breeder hen operations; then (3) any broiler operations. If a situation were to arise requiring the team to visit a farm out of the preferred sequence, it will simply need to adhere to the 48-hour waiting period described below.
- Each sampling team must wait a minimum of 48 hours between moving from any operation under contract with one Defendant to the operation under contract with another Defendant.

April 27, 2006  
Page 3 of 5

- Each sampling team must wait a minimum of 48 hours between exposure to any live fowl, including any operation under contract with any Defendant, and any operation under contract with Willow Brook Foods.

Again, this response is intended to comply with the Court's Order of March 24, 2006, and cannot be deemed as a waiver of the right of any property owner who is the subject of the Plaintiffs' proposed sampling to appear and assert additional objections or seek compliance with additional procedures.

## **2. Sampling Requirements**

As we discussed on Tuesday, the Defendants' expect any sampling permitted by the Court pursuant to Plaintiffs' subpoenas to be conducted openly, fairly, and with their full observation and participation. Our discussion left me with the impression that Plaintiffs agree in principle with some of Defendants' requirements, but take issue with other protocols the Defendants deem necessary. In order to avoid confusion, and in keeping with your request, the following sets forth the Defendants' expectations:

- Plaintiffs will provide Defendants with the sampling protocols and work plan a minimum of 96 hours prior to the first sampling event. Plaintiffs will advise Defendants of any modifications of such protocols or plans as quickly as feasible.
- Defendants and their consultants will accompany Plaintiffs' sampling teams during all sampling activities.
- Defendants will be provided a minimum of 72-hours notice for routine (non-storm related) sampling, which will require the establishment of off-site rendezvous points to facilitate the personnel from both sides joining to enter the subject property together.
- For storm-related sampling, Defendants must be provided the maximum amount of notice feasible that Plaintiffs intend to conduct sampling. As described above, an off-site rendezvous location will need to be designated. If the Plaintiffs fail to provide the Defendants a minimum of 3-hours notice, and such lack of notice prohibits Defendants' consultants from meeting at the rendezvous point and observing the entire sampling event, samples shall not be taken.
- Defendants shall be provided split samples in the field of all media collected for analysis. Plaintiffs will ensure that a sufficient sample size is

April 27, 2006

Page 4 of 5

collected to provide Defendants with adequate splits to perform all necessary analyses.

- In the event Plaintiffs intend to composite any samples at any location other than in the field, they will also provide Defendants with split samples of such composites in sufficient quantities to perform all necessary analyses.
- Prior to initiating any sampling activity, Plaintiffs will provide Defendants with a definitive list of all analytes/constituents they intend to sample and analyze for each media collected, including the laboratory methods that will be employed for each test. Plaintiffs will not conduct any analysis for any analytes/constituents or employ any methods not previously disclosed to Defendants. Should Plaintiffs conduct any analyses or employ methods not disclosed to Defendants, any such resulting data will not be admissible in any forum for any purpose.
- In order for Defendants' consultants to be adequately prepared to receive split samples, Plaintiffs will provide Defendants as part of the notice requirements definitive information regarding the number of samples of each type that will be collected for each type of media, including the number, size and type of sample containers that will be required, as well as any preservatives that will be utilized. In the event that Plaintiffs fail to make this disclosure within the required notice period, or the disclosure is erroneous resulting in Defendants not being equipped on site to receive proper split samples, Plaintiffs will either provide Defendants' consultants with the appropriate number and type of sample containers, or no samples requiring the missing containers will be collected.
- Plaintiffs will advise Defendants of the number of sampling teams it will deploy to the field, including a description for each team of the number of personnel who will be present, and their function (*i.e.* soil sample collector, surveyor, well driller). Plaintiffs will employ no greater number of teams than initially disclosed to Defendants, and will advise Defendants as part of the advance notice requirement of any personnel changes.
- Plaintiffs' sampling teams will maintain a log book, certified to by the team leader, identifying the date, time and property location for all sampling activities, which shall be open for inspection and copying by representatives of Defendants. By signing the log book each day, the sampling team leader will certify that the team has complied with all applicable biosecurity protocols, including any waiting periods.

April 27, 2006

Page 5 of 5

- Defendants may record the sampling activities and presence of the sampling teams on the subject properties by photographic and/or videographic means, except and unless restricted by the landowner.
- Plaintiffs and Defendants will exchange the raw data from the sampling activities, including QA/QC documentation, site sampling location maps and/or GPS data, and photographs or video recordings of sampling within ten days of receipt by such party or its consultants at no cost.
- Plaintiffs, their attorneys and/or their consultants will provide adequate security to ensure their ability to promptly respond and compensate Defendants for any injury to their poultry (or real property in the case of company owned/managed farms) resulting from any acts or omissions of Plaintiffs, their consultants or contractors. Such security may take the form of an enforceable indemnity agreement, a bond, escrowed funds in a sufficient amount, or an insurance contract identifying the Defendants as additional insured parties.
- Non-compliance with the aforesated protocols will render any resulting data inadmissible and not available for consideration by any expert. Compliance with these protocols does not preclude Defendants from asserting any challenge or objection to the admissibility, reliability or correctness of any data or result.

Given your delay in providing the Defendants with copies of the subpoenas and the running of our time for asserting objections, it is vital that Plaintiffs advise Defendants by no later than the close of business Friday of their agreement or objection to these requirements. If your clients agree, we will require that these terms be memorialized in an enforceable document. I look forward to your response.

Best regards,

JOYCE, PAUL & McDANIEL, PLLC

  
A. Scott McDaniel

ASM:jlw

cc: Defense Counsel of Record (*via e-mail*)

Ken Williams, Esq. (*via e-mail*)

Michael Graves, Esq. (*via e-mail*)

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April 28, 2006

Mr. M. David Riggs  
Riggs, Abney, Neal, Turpen,  
Orbison & Lewis, P.C.  
Frisco Building  
502 West Sixth Street  
Tulsa, Oklahoma 74419-1010

**Re: *State of Oklahoma et al. v. Tyson Foods, Inc., et al.***  
**U.S.D.C. N.D. Okla. Case No. 05-CV-329-TCK-SAJ**  
**Our File No. 4009.001**

Dear David:

This letter is being sent to correct an omission from my earlier correspondence of today's date regarding the supplemental biosecurity protocols applicable to our clients, Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc., (collectively, "Tyson Entities" and singularly, "Tyson Entity"). I have underlined the revised language below and ask that you please accept this letter as a replacement and/or supplement to my original letter of today's date.

As stated in my original correspondence, the Tyson Entities adopt Mr. McDaniel's April 27, 2006 correspondence, with the following exceptions:

- It is our understanding that Plaintiffs will visit growers under contract with Cobb-Vantress, Inc., first, and complete their sampling activities at such growers' operations before proceeding to other operations or properties.
- For all Tyson Entities, except Cobb-Vantress, Inc., each sampling team must wait a minimum of 72 hours between moving from any other poultry operation to an operation under contract with a Tyson Entity. Any visitor to a farm under contract with a Tyson Entity must not have had contact with any other poultry within the previous 72 hours.

Mr. David Riggs, Esq.  
April 28, 2006  
Page 2

- The relevant waiting time period for operations under contract with Cobb-Vantress, Inc. shall be 7 days.

Please call should you have any questions or comments. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul B. Jantzen", followed by a comma and the word "for".

STEPHEN L. JANTZEN  
For the Firm

cc: Defense Counsel of Record (via e-mail)  
Ken Williams, Esq. (via e-mail)  
Michael Graves, Esq. (via e-mail)



## INTRODUCTION TO BIOSECURITY

The publication, *Diseases of Poultry*, describes biosecurity as *safety from transmissible infectious diseases, parasites and pests. It embodies all of the measures that can or should be taken to prevent viruses, bacteria, fungi, protozoa, parasites, insects, rodents, and wild birds from endangering the well-being of our flocks.* Biosecurity practices must be designed to eliminate, contain, or reduce the exposure and spread of poultry pathogens through implementation and management of sound best management poultry husbandry practices and policies. A well-designed and managed biosecurity program will not ensure a totally pathogen free environment, but will reduce and make disease challenges more manageable to our poultry flocks. The following document outlines the steps all Tyson Team Members, contract growers, suppliers, visitors, and any other associates must follow.

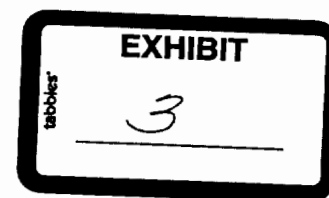
While biosecurity is always important in controlling disease and protecting our flocks, certain situations may warrant more extensive biosecurity practices. In cases such as Avian Influenza (AI), Infectious Laryngotracheitis (LT), *Mycoplasma gallisepticum* (MG), or Exotic Newcastle Disease (END), normal operating recommendations may not be sufficient. Therefore, different stages of biosecurity have been developed and can be implemented when a serious disease is in our flocks or when the threat is near. All operations are different and a more tailored biosecurity program for each complex may be needed. Work with your Tyson veterinarian to fine-tune your program.

Contingency plans must be in place in the event that a particular farm or area becomes infected with certain poultry diseases. In these circumstances, plans for routine practices need to be flexible to deal with these situations practically. A few examples may include:

- Feed delivery and egg pick up should be scheduled for the last load of the day or week on a "suspect" or "positive" farm.
- A specified area for washing and disinfecting vehicles should be identified.
- An approved method of euthanasia and disposal must be identified.
- Telephone lists of growers, team members, suppliers, etc., should be readily available for rapid dissemination of information.

Rapid response to disease outbreaks will result in less disease spread and a faster return to normal operating procedures.

Team members working within any area of live production must not own any noncommercial avian species.



## **DEFINITIONS**

### **Biosecurity**

Practices used to contain, reduce or eliminate the introduction or spread of disease-causing organisms in poultry operations.

### **72-Hour Rule**

The minimum time required for an individual between the last direct exposure to any noncommercial avian species and contact with Tyson Foods, Inc. live poultry is 72 hours. Additionally, travel into an area with exotic diseases will require following the 72-hour rule. People are one of the primary routes of introduction of a disease into an area. Because of today's rapid transportation methods, exotic or foreign animal diseases can be easily introduced into our country and into our animals. Therefore, it is extremely important to question anyone who enters our facilities about their recent travels. If in doubt, do not let them enter. Also remember, all visitors must abide by the 72-hour rule.

### **Clean**

Removal of all organic material including, but not limited to, feathers, feces and dirt.

### **Disinfecting**

The application of a disinfectant compound to all surfaces to eliminate infectious organisms (use phenolic or glutaraldehyde based products – these compounds are more effective in the presence of organic materials).

*Please keep in mind that the efficacy of these disinfectants increases with dose, contact time (exposure), and temperature. If using a dip tank, make certain that the solution is clean. The solution should be changed on a regular basis depending on the accumulation of organic material or other diluting effects (i.e. sunlight, rainwater, etc.). Depending on use, solutions should be changed at least weekly and may need to be changed daily. In the case of electronic or delicate tools, (Weltech scale, computer, cell phone, etc.) a thorough wipe down to remove dust/dirt followed by a light spray or wipe with disinfectant (example: Lysol) may be necessary.*

### **Clean Area**

A specific place where cleaned and disinfected items are stored when not in use. This area is segregated to reduce or eliminate any possible cross-contamination or recontamination. This specific place should be a "low-traffic" area.

### **Dirty Area**

A specific area where potentially contaminated (previously used) items are kept prior to the cleaning and disinfectant process.

### **Integrated Pest Management Program**

A coordinated effort to effectively control various pests using a combination of mechanical, cultural, behavioral, and chemical control means.

1. The incorporation of an effective rodent control program is essential to minimize the transmission of poultry disease causing organisms from one flock to another. This is also an important aspect of a coordinated effort to reduce *Salmonella* sp. and other foodborne disease organisms.
2. The incorporation of an effective insect control program is important to minimize the transmission of certain disease causing organisms.
3. Wild birds must be removed from and kept out of our poultry facilities. Research has shown that certain wild birds can carry mycoplasma, avian influenza, mites and other poultry disease agents into our domestic flocks.
4. An integrated pest management program (steps 1-3 above) is an effective, economical, and environmentally responsible approach to controlling poultry farm pests. Not only does the effective control of these pests reduce the risk of spreading poultry diseases, it reduces facility damage caused by certain pests (rodents and darkling beetles) and may reduce complaints (flies) from neighbors.

### **Multi-Age Facilities**

- Pullet farm that does not have two periods of 14 days downtime per year.
- Hen farm that does not have one period of 14 days downtime per year.
- Broiler farm that does not have at least 14 days downtime between each flock.

### **Downtime**




The time period when there are no birds present on the farm.

### **Noncommercial Avian Species**

A variety of birds including, but not limited to, backyard chickens, game fowl, parrots, exhibition birds, caged birds, pet birds, waterfowl, and ratites.

## BIOSECURITY STAGES

Examples of biosecurity responses (stages) to varying disease situations can be implemented on a farm, zone, area, or complex basis.

STAGE		LOCAL	ADJACENT REGION/STATE
1 GREEN		No serious disease present	No serious disease present
2 YELLOW		Serious disease present in immediate area or zone	Severe disease present in nearby region or state
3 RED		Serious or severe disease present on farm	Severe disease present in immediate area

***Serious Disease*** – Diseases that are highly contagious and cause significant production or performance losses *or* may have negative political and trade ramifications. (Example: LT, MG, Pullorum/Typhoid, Coryza, Pneumoviruses)

***Severe Disease*** – Diseases that are highly contagious and cause significant production or performance losses and *do* have severe negative political and trade ramifications *or* are foreign to our country. (Example: AI (all types) and END)

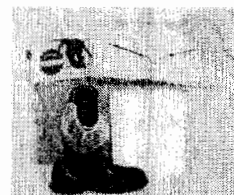
## Operating Practices During Stage Green

Attention to biosecurity practices is critical to keeping diseases out of our operations, even when the disease threat appears to be low. In fact, vigilance during these times will lessen the chances of Tyson being involved in the early stages of any disease outbreak.

### Broilers – Stage Green

#### Broilers – People

Team members must wear clean clothes and footwear when entering a farm. Special attention should be paid to shoes. Shoes should be covered with washable rubber boots or disposable plastic boots. Disposable boots must be left on the farm in an enclosed container. Washable rubber boots can be used if they are cleaned and sanitized upon departure from the farm.



Team members must wash hands before leaving the farm. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods. Adequate supplies such as paper towels may be necessary to facilitate proper hand sanitation.

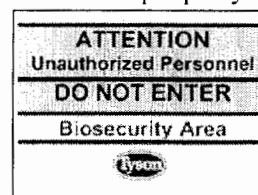


Tyson team members should log each farm visit in chronological order.

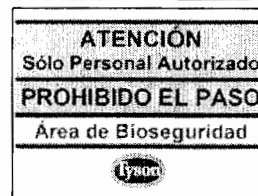
#### **Essential Visitors** (maintenance, utility, temporary farm helpers)



These people must at least follow the same clothing and footwear procedures as team members. Any equipment should be properly cleaned and disinfected before and after the service visit. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds, waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry.



Each complex should maintain a current list of ALL essential visitors. In the event of a change in Biosecurity Status, these people must be informed of precautions needed upon entering/exiting a farm.



#### **Nonessential Visitors** (family, friends, other visitors)

These people must not have had previous exposure to any poultry within the last 72 hours and must follow the same biosecurity practices as team members or essential visitors.

### **Broilers – Equipment**

All reusable equipment should be kept thoroughly cleaned and disinfected.

The vaccination vehicle should be treated as equipment. Cleaning the vehicle should be done on a regular basis.

**Vaccination equipment** - Coolers, SoloVac, water containers, etc. should be made of a nonporous material. All needles should be disposable and disposed of in an approved sharps container or biocontainment box after use. Efforts should be made to minimize the amount of unused water or other supplies that are returned at the end of the day (jugs in cardboard boxes). The clean area/dirty area concept should be applied to the vaccination equipment (see definitions).

- **Necropsy/Fat Collection Equipment** – Knives and/or scissors should be washed after use.
- **Blood Collection** – A sterile needle and/or scalpel blade should be used. Used needles and scalpels should be disposed of in an approved sharps container or biocontainment box. Do not take blood collection vials and/or syringes from inside a house on one farm to inside a house on another farm.
- **Electronic Equipment and Other Reusable Sensitive Items** (cell phones, Ratek, etc.) – Should be kept clean.
- **Catch Pens and Scales** - Should be free of organic material prior to use (feathers, manure, litter, etc.).

### **Broilers – Vehicles**

Service vehicles should be kept clean and orderly. Particular attention should be paid to the interior of the vehicle. The outside of the vehicle should be washed when obviously dirty. Managers should check for cleanliness of vehicles by performing both routine and unannounced inspections.



### **Broilers – Farms**

A minimum of two weeks (14 days) of downtime between flocks should be utilized to reduce disease.

**No other poultry shall be kept on the premises.** Contact with other avian species on other premises is strictly prohibited. It is recommended that other domesticated species (cattle, pigs, horses, cats, dogs, etc.) be separated from poultry housing. This separation protects the producers, equipment, and facilities, in addition to reducing disease-causing organisms.

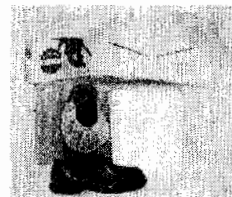
See Dead Bird Disposal section for appropriate methods of mortality disposal.

Regular communication should emphasize the importance of biosecurity to protect Tyson and its growers.

## **Pullets – Stage Green**

### **Pullets – People**

Team members must wear clean coveralls on all pullet farms. Coveralls may be stored and left on the farm. They must be washed between flocks or when obviously dirty. Hands must be washed before leaving the farm. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods. Adequate supplies such as paper towels may be necessary to facilitate proper hand sanitation.



Shoes should be covered with washable rubber boots or disposable plastic boots. Disposable boots must be left on the farm in an enclosed container. Washable rubber boots must be cleaned and sanitized upon departure from the farm.



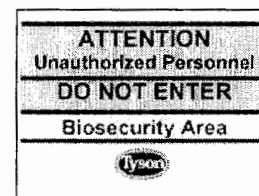
Tyson team members should log each farm visit in chronological order.

### **Essential Visitors** (maintenance, utility, temporary farm helpers)



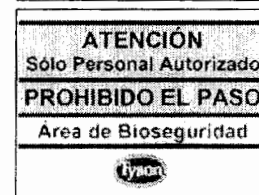
These people must at least follow the same clothing and footwear procedures as team members. Any equipment should be properly cleaned and disinfected before and after service visits. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds and waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in Biosecurity Status, these people must be informed of precautions needed upon entering/exiting a farm.



### **Nonessential Visitors** (family, friends, other visitors)

These people must not have had previous exposure to any poultry within the last 72 hours and must follow the same biosecurity practices as team members or essential visitors.

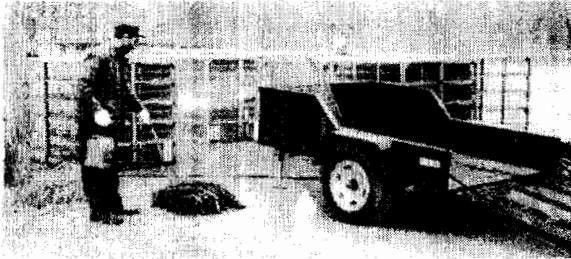


### **Pullets – Equipment**

Clean equipment is essential for handling long-lived birds. All equipment should be made of stainless steel and hard plastic (nonporous) without holes or crevices that may allow organic material to accumulate. Benches, tables, wheels, stools, chairs, fans, drop cords, lights, beak trimmers, baskets, and equipment trailers should be easily cleaned and not made of wood. All needles should be disposed into an approved biohazard container. Equipment should be cleaned and sanitized between farms in the following manner:

- If weigh pens are not supplied for each farm, pens should be cleaned and sanitized by removing all organic material and disinfected with an approved disinfectant.

- To properly clean and disinfect nets, high pressure cleaning techniques and manual removal of feathers is necessary. Use approved disinfectants for optimal disinfecting. Allow nets to dry with exposure to full sunlight. Utilize multiple sets of nets for proper cleaning, disinfecting, and drying. If economically feasible, nets may be purchased for each farm and moved with the pullets. Store cleaned and disinfected pens and nets in a clean area. If possible, store nets fully exposed to direct sunlight.
- Cold sterilization with Nolvasan is an acceptable method for sterilization of vaccine guns. Heat sterilization may also be used. **CAUTION:** When heat sterilization is used the O-rings in the vaccinating guns may be damaged, resulting in improper dosing by syringes.
- All other reusable equipment (scales, catch hooks, etc.) should be thoroughly cleaned and disinfected.
- Vaccine wells should be rinsed and dried.
- The clean area/dirty area concept should be applied to the vaccination equipment.
- The trailer, when properly cleaned and disinfected, may be used as the clean room.
- All catching equipment, including cages, trailers, loaders, and equipment trailers should be thoroughly cleaned and disinfected between movements. If pullets are being caught with automatic catching machines, special attention should be made in the cleaning and disinfecting of these machines.



Designated cages for the breeder operation are highly recommended. This would allow for sufficient time for the washing and disinfecting of cages and downtime.

The same biosecurity measures for vaccinating crews applies for pullet moving crews (see above).

### **Pullets – Vehicles**

Service vehicles should be kept clean and orderly. Vehicles should be washed and disinfected weekly (more frequently when obviously dirty). Particular attention should be paid to the interior of the vehicle. Managers should check for cleanliness of vehicles by performing both routine and unannounced inspections.

All service crew vehicles (vaccination, moving, bleeding, etc.) should be kept clean and orderly. These vehicles should be cleaned and disinfected daily.

### **Pullets – Farms**

A minimum of two weeks (14 days) of downtime between flocks should be utilized to reduce disease. On multi-age farms, each age should be treated as a separate farm.

**No other poultry shall be kept on the premises.** Contact with other avian species on other premises is strictly prohibited. It is recommended that other domesticated species (cattle, pigs, horses, dogs, cats, etc.) be separated from poultry housing. This separation protects the producers, equipment, and facilities, in addition to reducing disease-causing organisms.

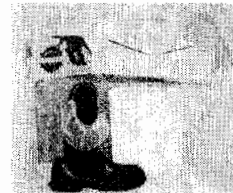
See Dead Bird Disposal section for appropriate methods of mortality disposal.

Regular communication should emphasize the importance of biosecurity to protect Tyson and its growers.

## Breeders – Stage Green

### Breeders – People

Team members must wear clean coveralls on all breeder farms. Coveralls may be stored and left on the farm and cleaned between flocks. Hands must be washed before leaving the farm. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods. Adequate supplies such as paper towels may be necessary to facilitate proper hand sanitation.



Shoes should be covered with washable rubber boots or disposable plastic boots. Disposable boots must be left on the farm in an enclosed container. Washable rubber boots must be cleaned and sanitized upon departure from the farm.



Service crews (spike male catching, bleeding, weighing, nose-boning, etc.) should wear clean clothes and footwear before entering a farm. All footwear must be cleaned and disinfected before entering a breeder house. The use of “street shoes” for service crews should be discouraged. Company supplied uniforms should be utilized. During warm weather, surgical scrubs are a viable alternative while in cold weather coveralls or uniforms should be supplied. Hair nets should be worn on the head or over hats on all farms. Hands must be washed before leaving the farm.



It is recommended that the egg truck driver have footwear dedicated for egg pickup. When not in use, the footwear should be cleaned and stored in a designated location at the hatchery. The egg truck driver must enter only the workroom or egg room.

Tyson team members should log each farm visit in chronological order.

### **Essential Visitors** (maintenance, utility, temporary farm helpers)



These people must follow at least the same clothing and footwear procedures as team members. Any equipment should be properly cleaned and disinfected before and after the service visit. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds and waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in Biosecurity Status, these people must be informed of precautions needed upon entering/exiting a farm.

**Nonessential Visitors** (family, friends, other visitors)

These people must not have had previous exposure to any poultry within the last 72 hours and must follow the same biosecurity practices as team members or essential visitors.

**Breeders – Equipment**

All equipment used in the breeder house should be easily cleaned and disinfected. If weigh pens are not supplied for each farm, pens should be cleaned and sanitized by removing all organic material and disinfected with an approved disinfectant. Pens should be free from visible organic material (dirt, feces, and feathers) before being disinfected. Once visibly clean, the pens should be hosed down with water then sprayed with disinfectant solution or scrubbed and cleaned with a brush that has been dipped in a disinfectant solution. The disinfectant solution should be fresh and not grossly contaminated with dirt or feces. If nets are used, refer to the net cleaning and disinfectant paragraph in the Pullet Equipment section.

All other equipment taken into the breeder house (catch hooks, tools, bleeding equipment, etc.) should be cleaned and disinfected in the same manner as catch pens. In the case of electronic or delicate tools, (Weltech scale, computer, cell phone, etc.) a thorough wipe-down followed by a light spray or wipe with disinfectant (example: Lysol) is necessary. Because paper and notebooks are very difficult to clean and disinfect, only the necessary documents or forms should enter the breeder house (do not take an entire notebook or clipboard into the house if it is not needed).

Inventory (egg boxes, egg flats, etc.) should be managed to avoid the necessity of transfer of materials from farm to farm. This practice helps prevent the spread of poultry diseases and greatly reduces the spread of chicken mites.

**Breeders – Vehicles**

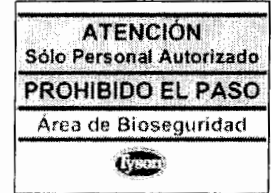
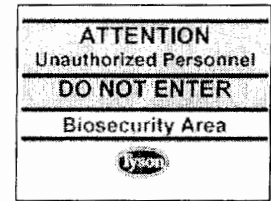
Service vehicles should be kept clean and orderly. Vehicles should be washed and disinfected weekly (more frequently when obviously dirty). Particular attention should be paid to the interior of the vehicle. Managers should check for cleanliness of vehicles by performing both routine and unannounced inspections.

All crew vehicles (vaccination, moving, bleeding, etc.) should be kept clean and orderly. These vehicles should be cleaned and disinfected between farms.

The cab of the egg truck must be cleaned and disinfected daily and the entire truck washed and disinfected as needed, at least weekly.

**Breeders – Farms**

A minimum of two weeks (14 days) of downtime between flocks should be utilized to reduce disease. On multi-age farms, each age should be treated as a separate farm.



**No other poultry shall be kept on the premises.** Contact with other avian species on other premises is strictly prohibited. It is recommended that other domesticated species (cattle, pigs, horses, cats, dogs, etc.) be separated from poultry housing. This separation protects the producers, equipment, and facilities, in addition to reducing disease-causing organisms.

The use of cats for rodent control is discouraged. If used, cats must only be used for one flock.

See Dead Bird Disposal section for appropriate methods of mortality disposal.

Regular communication should emphasize the importance of biosecurity to protect Tyson and its growers.

### **Breeder – Catching**

All catching equipment, including cages, trailers, loaders, and equipment trailers should be thoroughly cleaned and disinfected between movements. Contract breeder catchers should be made aware of our biosecurity programs and must adhere to our guidelines. Catchers should have clean clothing and footwear before entering a poultry house. Contractors' equipment should be evaluated for cleanliness at the time of load-out. An off-site area for cleaning and disinfecting contractors' equipment may be needed. The cleanliness of contractors' equipment is of paramount importance on multi-age breeder facilities. Contract catchers should be aware that there might be other at-risk poultry on the farm. Therefore, contract catchers should enter only the houses in which they are catching.

Designated catching nets for multi-age breeder operations are highly recommended.

### **Spike Male – Stage Green**

Before moving any spike male, be sure to have **NEGATIVE** serology for MS, MG and AI - **NO EXCEPTIONS**. Ample time (minimum of one week) must be allowed for blood work to be received and processed by the lab. **Should MS or MG be confirmed, these males must not be used to spike in negative hen flocks.** Birds must also be physically examined to ensure that the birds do not have mites. **No birds with mites may be moved until the mites have been effectively treated.**



Male movements should be planned to minimize the number of deliveries to reduce exposure. Male moving equipment should be cleaned and disinfected prior to the movement of the males.

**Biosecurity in the male spike house should mirror the protocol outlined for pullets.** Because males may be distributed to many houses, extra precautions are necessary.

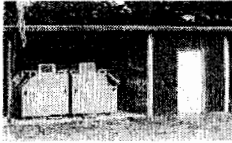
including extra blood work (*Mycoplasma* sp.) and physical examination for mites. Anytime birds are added or moved, blood work is necessary (see above).

All birds that are put in a spike house must have received identical vaccinations (i.e. never mix birds that are vaccinated for ILT with birds that are not vaccinated for ILT).

A minimum of 14 consecutive days of downtime twice yearly is necessary to prevent the spread of disease. Spike males are the primary means of disseminating certain diseases (MG, MS).

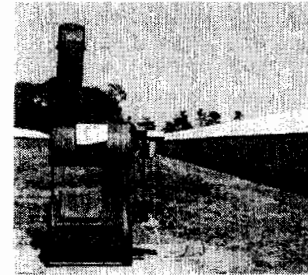
## Other Operating Areas – Stage Green

### Dead Bird Disposal – Stage Green



Dead birds should be disposed of on the farm. Composting, incineration, or freezing are the Tyson approved methods of dead bird disposal. Disposal of birds in pits is no longer a Tyson approved method, regardless of local ordinances that may permit it.

In most cases, growers should not be allowed to take their normal mortality to rendering plants or livestock landfills as this practice has proven to start and perpetuate many disease outbreaks. If growers are allowed to utilize livestock landfills or rendering plants, this practice must cease immediately once a severe or serious disease is identified in the area. The complex must have a written protocol that effectively and expeditiously (within 24 hours) communicates this change to all growers when an outbreak occurs. The compliance with this change should also be verified.



In complexes with freezers, the local management must be familiar with the routine activities of the mortality removal vehicle. This understanding will facilitate rapid response in the event of a disease threat. Mortality removal vehicles must have the capabilities to be tarped. The truck and trailer should be clean at the start of each day.

Complexes utilizing incinerators or composting must protect carcasses from domestic or wild animals. Carcasses being held for incineration must be covered.

### Litter Removal – Stage Green

Follow best management practices during the removal and spreading of litter.

### Live Haul – Stage Green

Growers are often concerned about the live haul truck bringing disease causing organisms onto their farm. Although this seems like a legitimate threat, it is rarely a problem. Most poultry diseases require an active host to allow an organism to live and multiply. In live haul, this is not a problem because all of the “hosts” are caught and taken to the plant. **All live birds may serve as hosts for poultry disease agents from one flock to the next.** It is for this reason that all birds should be culled and disposed of properly after each flock.

## **Hatchery – Stage Green**

### **Hatchery – People**

Team members must wear clean clothes and footwear when entering the hatchery. Team members should also wash their hands upon entry. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods.

It is recommended that the egg truck driver, chick bus driver and any helpers have footwear dedicated for egg pickup and chick delivery. When not in use, the footwear should be cleaned and stored in a designated location at the hatchery. The egg truck driver must enter only the workroom or egg room.

Tyson team members should log each farm visit in chronological order.

Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds, waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry.

#### **Essential Visitors** (maintenance, utility, deliveries)

Any equipment should be properly cleaned and disinfected before and after service visits.

These people should not have had contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds, waterfowl, etc.) within the last 72 hours and must follow the same biosecurity practices as team members.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in Biosecurity Status, these people must be informed of precautions needed upon entering/exiting a farm.

#### **Nonessential Visitors** (tours or other visitors)

These people must not have had contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds, waterfowl, etc.) within the last 72 hours and must follow the same biosecurity practices as team members or essential visitors.

## **Hatchery Equipment**

**Egg Transport** - Farm racks, egg flats, paper commercial egg supplies, and other associated articles used in the delivery or shipping of eggs from the breeder farm should be properly cleaned before delivery to the farm.

**Chick Delivery** - Moffitt loaders, pallets, hand trucks, dollies and other equipment associated with the delivery of the processed chicks to the broiler farms should be cleaned daily.

**Paperless chick boxes should be cleaned and disinfected twice a week (for example, Wednesday and Saturday). In papered boxes, the paper should be changed at a minimum of twice a week and the boxes washed at least once a week.**

#### **Hatchery Vehicles**

The cab of the egg transport and chick delivery vehicles must be cleaned and disinfected daily and the entire truck washed and disinfected as needed, at least weekly. Managers should check for cleanliness of vehicles on both routine and unannounced inspections.

#### **Feed Mill – Stage Green**

Feed truck driver must have footwear dedicated for feed delivery. When not in use, the footwear should be cleaned and stored in a designated location at the feed mill. Feed truck drivers should never enter the poultry house. Feed tickets should be left in a designated location outside of the poultry house.

Feed mill employees should not own or be associated with any other noncommercial poultry or avian species.

Feed trucks should be washed weekly. The cab of the truck must be cleaned and disinfected daily.

#### **Offices- Stage Green (Growout, Plant, Feed Mill, Truck Shop/Service center)**

Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.

**A clean footbath will prevent the introduction of poultry disease-causing organisms into the office area.** No office personnel are allowed to have backyard poultry or any noncommercial avian species (ducks, guinea fowl, turkeys, parrots, etc.).

Team members who are also Tyson contract growers must change into clean clothes and shoes before entering a Tyson facility and before returning to their poultry farm. Team members who are non-Tyson contract growers must shower and change into clean clothes and shoes before entering a Tyson facility and before returning to their poultry farm.

Because equipment and team members from the shop and service center may potentially have direct contact with live poultry on the farms, it is crucial to keep the shop manager informed with the current Biosecurity Status in the complex. Specific questions regarding Biosecurity may be directed to the Tyson veterinarian. When visiting a farm, shop/service center team members should follow the same Biosecurity measures outlined in each section of this manual.

## Operating Practices during Stage Yellow

Serious or severe disease outbreaks require special precautions. This level of biosecurity will require a heightened awareness and implementation of practices that will minimize the spread of contagious disease. Extra cost and effort will be required to prevent the spread of disease while continuing to operate our business. Verification of biosecurity practices is essential to success.



### Broilers – Stage Yellow ▽

#### Broilers – People

Team members must wear clean clothes or coveralls, hair nets, and footwear when entering a farm. Special attention should be paid to shoes. Shoes must be covered with washable rubber boots or disposable plastic boots. Additional protective measures may be required when collecting fat or blood. These include the use of gloves and the wearing of a protective covering (apron, coveralls).



Crews going from farm to farm for the purpose of collecting blood or fat or weighing birds should change coveralls between each farm.



All disposable clothing must be removed outside of the building and left on the farm in an enclosed container. Reusable rubber boots must be cleaned and sanitized before entry and upon departure from the farm.

Arrangements with the grower should be made so that disposable attire (coveralls, boots, and hair nets) may be left on the farm in an enclosed container on the outside of the house.

Team members must wash hands upon entry and before leaving the farm. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods. Adequate supplies such as paper towels may be necessary to facilitate proper hand sanitation.

Tyson team members must log each farm visit in chronological order.

#### **Essential Visitors** (maintenance, utility, temporary farm helpers)



These people must at least follow the same clothing and footwear procedures as team members. Any equipment should be properly cleaned and disinfected before and after the service visit. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds, waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry.

Growers assisting other Tyson growers with chick placement must have clean, sanitized foot wear when entering the farm. Should growers need to share equipment, effective cleaning and disinfection must take place between farms.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.

#### **Nonessential Visitors** (family, friends, other visitors)

These visitors must be kept to a minimum, not have had previous exposure to any poultry within the last 72 hours, and must follow the same biosecurity practices as team members or essential visitors.

#### **Broilers – Equipment**

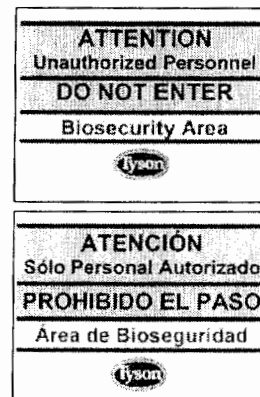
All reusable equipment should be kept thoroughly cleaned and disinfected.

The vaccination vehicle should be treated as equipment. Cleaning the vehicle should be done on a regular basis.

- Vaccination equipment - Coolers, SoloVac, water containers, etc. should be made of a nonporous material. All needles should be disposable. Efforts should be made to minimize the amount of unused water or other supplies that are returned at the end of the day (jugs in cardboard boxes). The clean area/dirty area concept should be applied to the vaccination equipment (see definitions).
- **Necropsy/Fat Collection Equipment** – Knives and/or scissors should be washed and sanitized after use.
- **Blood Collection** – A sterile needle and/or scalpel blade should be used. Do not take blood collection vials and/or syringes from inside a house on one farm to inside a house on another farm. Used needles and scalpels should be disposed of in an approved sharps container or biocontainment box after.
- **Electronic Equipment and Other Reusable Sensitive Items** (cell phones, Ratek, etc.) – Any equipment that is taken inside the house should be sanitized using disposable wipes upon leaving the farm.
- **Catch Pens and Scales** – Should be free of organic material (feathers, manure, litter, etc.) prior to use. Upon leaving the farm, it should be cleaned and disinfected with an approved product.

#### **Broilers – Vehicles**

Service, vaccination, and weighing crew vehicles must be kept clean and orderly. Particular attention should be paid to the interior of the vehicle. Floor mats and tires should be disinfected upon leaving the farm. The outside of the vehicle should be washed daily and when obviously dirty or when going from a “Yellow Zone” to a “Green Zone”. Managers



should check for cleanliness of vehicles by performing both routine and unannounced inspections.

Vehicles should not be parked near the poultry house. If possible, park at the gate or at least 100 feet from the house.

### **Broilers – Farms**

A minimum of two weeks (14 days) of downtime between flocks should be utilized to reduce disease.

**No other poultry shall be kept on the premises.** Contact with other avian species on other premises is strictly prohibited. It is recommended that other domesticated species (cattle, pigs, horses, cats, dogs etc.) be separated from poultry housing. This separation protects the producers, equipment, and facilities, in addition to reducing disease-causing organisms.

See Dead Bird Disposal section for appropriate methods of mortality disposal.

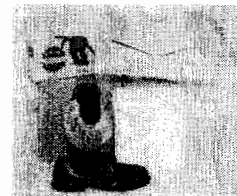
Communications pertaining to the situation should be disseminated to the growers, potential visitors, and pertinent Team Members in a timely manner.



## Pullets- Stage Yellow ▽

### Pullets – People

Team members must wear clean coveralls and hairnets on all pullet farms. Coveralls may be stored and left on the farm. They must be washed between flocks or when obviously dirty. Hands must be washed before leaving the farm. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods. Adequate supplies such as paper towels may be necessary to facilitate proper hand sanitation.



Shoes should be covered with washable rubber boots or disposable plastic boots. All disposable clothing must be removed outside of the building and left on the farm in an enclosed container. Reusable rubber boots must be cleaned (to remove ALL organic matter) and sanitized upon departure from the farm.



Service staff should schedule visits from youngest to oldest birds. Known positives or suspect flocks must be visited only when necessary and at the end of the day. Communication by telephone may be necessary to avoid contact with positive or suspect farms.

Service crews (vaccination, bleeding, weighing, etc.) should only service one farm per day. If several farms are visited, clean coveralls, hairnets and footwear must be provided for each farm.

Arrangements with the grower should be made so that disposable attire (coveralls, boots, and hair nets) may be left on the farm in an enclosed container on the outside of the house.

Tyson team members must log each farm visit in chronological order.

### **Essential Visitors** (maintenance, utility and temporary farm helpers)



The necessity of all visits should be questioned. Visitors from high-risk areas "Stage Red" will be prohibited until they have fulfilled the requirements of the 72-hour rule or by direct permission from the live production manager.

Essential visitors must follow at least the same biosecurity procedures as team members. Any equipment should be properly cleaned and disinfected before and after the service visit. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds and waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry.

Should growers need to share equipment, effective cleaning and disinfection must take place between farms.

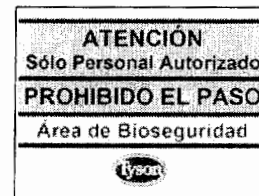
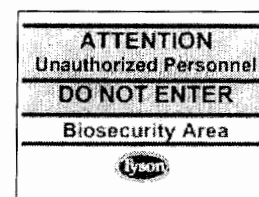
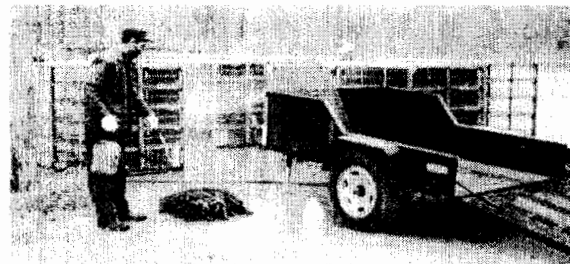
Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.

**Nonessential Visitors** (family, friends, other visitors)  
Nonessential visitors will not be allowed.

### Pullets – Equipment

Clean equipment is essential for handling long-lived birds. All equipment should be made of stainless steel and hard plastic (nonporous) without holes or crevices that may allow organic material to accumulate. Benches, tables, wheels, stools, chairs, fans, drop cords, lights, beak trimmers, baskets, and equipment trailers should be easily cleaned and not made of wood. All needles should be disposed into an approved biohazard container. Equipment should be cleaned and sanitized between farms in the following manner:

- Weighing pens should be provided for each farm. If weigh pens are not supplied for each farm, pens should be cleaned and sanitized by removing all organic material and disinfected with an approved disinfectant.
- To properly clean and disinfect nets, high pressure cleaning techniques and manual removal of feathers is necessary. Use approved disinfectants for optimal disinfecting. Allow nets to dry with exposure to full sunlight. Utilize multiple sets of nets for proper clearing, disinfecting, and drying. If economically feasible, nets may be purchased for each farm and moved with the pullets. Store cleaned and disinfected pens and nets in a clean area. If possible, store nets fully exposed to direct sunlight.
- Cold sterilization with Nolvasan is an acceptable method for sterilization of vaccine guns. Heat sterilization may also be used. **CAUTION:** When heat sterilization is used the O-rings in the vaccinating guns may be damaged, resulting in improper dosing of vaccine.
- All other reusable equipment (scales, catch hooks, etc.) should be thoroughly cleaned and disinfected.
- Vaccine wells should be rinsed and dried.
- The clean area/dirty area concept should be applied to the vaccination equipment.
- The trailer, when properly cleaned and disinfected, may be used as the clean room.
- All catching equipment, including cages, trailers, loaders, and equipment trailers should be thoroughly cleaned and disinfected between movements. If pullets are being caught with automatic catching machines, special attention should be made in the cleaning and disinfecting of these machines.



Designated cages for the breeder/pullet operation are required. This would allow for sufficient time for the washing and disinfecting of cages and downtime.

The same biosecurity measures for vaccinating crews apply for pullet moving crews (see above).

### **Pullets – Vehicles**

Service and crew vehicles should be kept clean and orderly. The outside of the vehicle should be washed daily and when obviously dirty or when going from a “Yellow Zone” to a “Green Zone”. Particular attention should be paid to cleaning the interior of the vehicle. Truck cabs and tires should be sprayed with disinfectant after each farm visit. Managers should check for cleanliness of vehicles by performing both routine and unannounced inspections.

All service crew vehicles (vaccination, moving, bleeding, etc.) should be kept clean and orderly. These vehicles must be cleaned and disinfected when moving to a different farm.

Vehicles should not be parked near the poultry house. If possible, park at the gate or at least 100 feet from the house.

### **Pullets – Farms**

A minimum of two weeks (14 days) of downtime between flocks should be utilized to reduce disease. On multi-age farms, each age should be treated as a separate farm.

**No other poultry shall be kept on the premises.** Contact with other avian species on other premises is strictly prohibited. It is recommended that other domesticated species (cattle, pigs, horses, cats, dogs etc.) be separated from poultry housing. This separation protects the producers, equipment, and facilities, in addition to reducing disease-causing organisms.

See Dead Bird Disposal section for appropriate methods of mortality disposal.

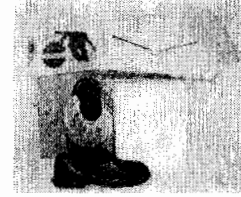
Communications pertaining to the situation should be disseminated to the growers, potential visitors, and pertinent Team Members in a timely manner.



## Breeders – Stage Yellow ▽

### Breeders – People

Team members must wear clean coveralls and hairnets on all breeder farms. Coveralls may be stored and left on the farm. They must be washed between flocks or when obviously dirty. Hands must be washed before leaving the farm. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods. Adequate supplies such as paper towels may be necessary to facilitate proper hand sanitation.



Shoes should be covered with washable rubber boots or disposable plastic boots. All disposable clothing must be removed outside of the building and left on the farm in an enclosed container. Reusable rubber boots must be cleaned (to remove ALL organic matter) and sanitized upon departure from the farm.



Service staff should schedule visits from youngest to oldest birds. Known positives or suspect flocks should be visited only when necessary and at the end of the day. Communication by telephone may be necessary to avoid contact with positive or suspect farms.

Service crews (vaccination, bleeding, nose boning, weighing, etc.) must only service one farm per day. If several farms are visited, clean coveralls, hair nets and footwear must be provided for each farm.

The egg truck driver must have footwear dedicated for egg pickup. The footwear must be cleaned (to remove ALL organic matter) and sanitized after each farm. When not in use, the footwear should be cleaned and stored in a designated location at the hatchery. Immediately upon arrival to the farm, the egg truck driver must put on disposable coveralls. The egg truck driver must enter only the workroom or egg room. Egg truck drivers must not own or be associated with any other non-commercial poultry or avian species.

Tyson team members must log each farm visit in chronological order.

Arrangements with the grower should be made so that disposable attire (coveralls, boots, and hair nets) may be left on the farm in an enclosed container on the outside of the house.

### **Essential Visitors** (maintenance, utility, temporary farm helpers)



The necessity of all visits should be questioned. Visitors from high-risk areas "Stage Red" will be prohibited until they have fulfilled the requirements of the 72-hour rule or by direct permission from the live production manager. Essential visitors must at least follow the same biosecurity procedures as team members. Any equipment should be properly cleaned and disinfected before and after the

service visit. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds and waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry.

Should growers need to share equipment, effective cleaning and disinfection must take place between farms.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.

**Nonessential Visitors** (family, friends, other visitors)  
Nonessential visitors will not be allowed.

### **Breeders – Equipment**

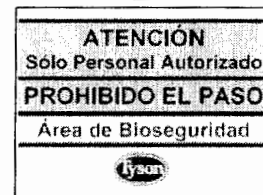
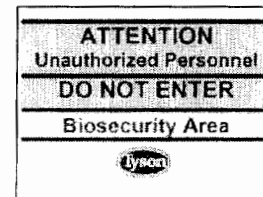
Clean equipment is essential for handling long-lived birds. All equipment should be made of stainless steel and hard plastic (nonporous) without holes or crevices that will allow organic material to accumulate. Benches, tables, wheels, stools, chairs, fans, drop cords, lights, debeakers, baskets, and equipment trailers should be easily cleaned and not made of wood. All needles and blood collection equipment should be disposed into an approved biohazard container. Equipment should be cleaned and sanitized between farms in the following manner:

- Weighing pens should be provided for each farm. If weigh pens are not supplied for each farm, pens should be cleaned and sanitized by removing all organic material and disinfected with an approved disinfectant.
- To properly clean and disinfect nets, high pressure cleaning techniques and manual removal of feathers is necessary. Use approved disinfectants for optimal disinfecting. Allow nets to dry with exposure to full sunlight. Utilize multiple sets of nets for proper cleaning, disinfecting and drying. If economically feasible, nets may be purchased for each farm and moved with the pullets. Store cleaned and disinfected pens and nets in a clean area. If possible, store nets fully exposed to direct sunlight.
- All other reusable equipment (scales, catch hooks, etc.) should be thoroughly cleaned and disinfected before leaving the farm.
- The clean area/dirty area concept must be applied all equipment used in the breeder house.

The same biosecurity measures for pullet crews apply for crews working in breeder facilities.

### **Breeders – Vehicles**

Service and egg pickup vehicles should be kept clean and orderly. Vehicles must be washed and disinfected daily and upon leaving a "Yellow Zone" before traveling into a



“Green Zone”. Particular attention should be paid to cleaning the interior of the vehicle. Truck cabs and tires should be sprayed with disinfectant after each visit. Managers should check for cleanliness of vehicles by performing both routine and unannounced inspections.

All service crew vehicles (vaccination, moving, bleeding, etc.) should be kept clean and orderly. These vehicles must be cleaned and disinfected when moving to a different farm.

Vehicles should not be parked near the poultry house. If possible, park at the gate or at least 100 feet from the house.

### **Breeders – Farms**

A minimum of two weeks (14 days) of downtime between flocks should be utilized to reduce disease. On multi-age farms, each age house should be treated as a separate farm.

**No other poultry shall be kept on the premises.** Contact with other avian species on other premises is strictly prohibited. It is recommended that other domesticated species (cattle, pigs, horses, cats, dogs etc.) be separated from poultry housing. This separation protects the producers, equipment, and facilities, in addition to reducing disease-causing organisms.

The use of cats for rodent control is discouraged. If used, cats must only be used for one flock.

See Dead Bird Disposal section for appropriate methods of mortality disposal.

Communications pertaining to the situation at hand should be disseminated to the growers, potential visitors, and pertinent Team Members in a timely manner.

### **Breeder – Catching**

All catching equipment, including cages, trailers, loaders, and equipment trailers should be thoroughly cleaned and disinfected between movements. Contract breeder catchers should be made aware of our biosecurity programs and must adhere to our guidelines. Contractors’ equipment should be evaluated for cleanliness at the time of load-out. An off-site area for cleaning and disinfecting contractors’ equipment may be needed. The cleanliness of contractors’ equipment is of paramount importance on multi-age breeder facilities. Contract catchers should be aware that there might be other at-risk poultry on the farm. Therefore, contract catchers should enter only the houses in which they are catching.

Designated catching nets for multi-age breeder operations are required and the use of the contract catching crew’s nets is prohibited. Catching crews must observe the same biosecurity procedures as team members when entering a breeder facility.



### Spike Male – Stage Yellow

Before moving any spike male, be sure to have **NEGATIVE** serology for MS, MG and AI—**NO EXCEPTIONS**. Ample time (minimum of one week) must be allowed for blood work to be received and processed by the lab. **Should MS, MG, or AI be confirmed, these males must not be used to spike in negative hen flocks.** Birds must also be physically examined to ensure that the birds do not have mites. **No birds with mites may be moved until the mites have been effectively treated.**



In planning male movements, minimize the number of deliveries to minimize exposure. Male moving equipment must be cleaned and disinfected prior to the movement of the males.

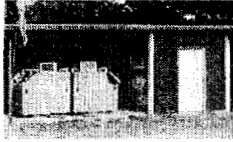
**Biosecurity in the male spike house should mirror the protocol outlined for pullets.** In that males may be distributed to many houses, extra precautions are necessary, including extra blood work (*Mycoplasma* sp.) and physical examination for mites. Anytime birds are added or moved, blood work is necessary (see above).

All birds that are put in a spike house must have received identical vaccinations. (i.e. never mix birds that are vaccinated for ILT with birds that are not vaccinated for ILT).

A minimum of 14 consecutive days downtime twice yearly is necessary to prevent the spread of disease. Spike males are the primary means of disseminating certain diseases (MG, MS).

## Other Operating Areas – Stage Yellow ▽

### Dead Bird Disposal – Stage Yellow



Dead birds should be disposed of on the farm. Composting, incineration, or freezers are the Tyson approved methods of dead bird disposal. Disposal of birds in pits is no longer a Tyson approved method, regardless of local ordinances that may permit it.

In most cases, growers should not be allowed to take their normal mortality to rendering plants or livestock landfills. This practice has proven to start and perpetuate many disease outbreaks. If growers are allowed to utilize livestock landfills or rendering plants, this practice must cease immediately once a severe or serious disease is identified in the area. The complex must have a written protocol that effectively and expeditiously (within 24 hours) communicates this change to all growers when an outbreak occurs. The compliance with this change should also be verified.



In complexes with freezers, the local management must be familiar with the routine activities of the mortality removal vehicle. This understanding will facilitate rapid response in the event of a disease threat. Pickups on “Stage Yellow” farms should be scheduled on the same day, preferably at the end of the week. Mortality removal vehicles must be tarped. The truck should be washed and disinfected at the end of each day.

Complexes utilizing incinerators or composting must protect carcasses from domestic or wild animals. Carcasses being held for incineration must be covered.

### Litter Removal – Stage Yellow

Before removing litter from the farm, the live production manager must consult a Tyson veterinarian for the appropriate disease specific procedures.

### Live Haul – Stage Yellow

Growers are often concerned about the live haul truck bringing disease-causing organisms onto their farm. Although this seems like a legitimate threat, it is rarely a problem. Most poultry diseases require an active host to allow an organism to live and multiply. In live haul, this is not a problem because all of the “hosts” are caught and taken to the plant. **All live birds may serve as hosts for poultry disease agents from one flock to the next.** It is for this reason that all birds should be culled and disposed of properly after each flock. This is especially important during a disease outbreak. During “Stage Yellow” more stringent procedures may be required for the live haul process. Consult your Tyson Veterinarian for practices concerning washing trucks, netting trucks, and routing of trucks.

“Stage Yellow” farms must be scheduled at the end of the day / week.

In certain cases, trucks may be netted or birds may be sprayed with water to prevent flying feathers. This will help minimize organisms from spreading to other susceptible poultry. Routing trucks away from other poultry farms is a recommended way to minimize the spread of disease. A great deal of thought should be put into truck routes. In some situations it may be necessary to wash the cages.

Team members that have commercial poultry must always put on clean clothes and shower before entering their own birds.

### **Hatchery – Stage Yellow**

#### **Hatchery – People**

Team members must wear clean clothes and footwear when entering the hatchery. Team members should also wash their hands upon entry. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods. A footbath that is maintained daily is required at all entrances to the hatchery.

Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds, and waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry. Team members with commercial poultry must use different clothing for the hatchery and their farm.

The egg truck driver, chick bus driver and assistances must have footwear dedicated for egg pickup or chick delivery. The footwear must be cleaned (to remove ALL organic matter) and sanitized after each farm. When not in use, the footwear should be cleaned and stored in a designated location at the hatchery. Immediately upon arrival to the farm, they must put on disposable coveralls and hairnets. The egg truck driver must enter only the workroom or egg room.

Tyson team members should log each farm visit in chronological order.

#### **Essential Visitors (maintenance, utility, deliveries)**

These people must at least follow the same clothing and footwear procedures as team members. Any equipment should be properly cleaned and disinfected before and after service visits. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds, waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.

**Nonessential Visitors** (tours or other visitors)

Non essential visits must be kept to a minimum or not allowed. If visits occur, the visitor must not have had previous exposure to any poultry within the last 72 hours and must follow the same biosecurity practices as team members or essential visitors.

**Hatchery Equipment**

**Egg Transport** - Farm racks, egg flats, paper commercial egg supplies, and other associated articles used in the delivery or shipping of eggs from the breeder farm should be properly cleaned before delivery to the farm.

Eggs from *Mycoplasma sp.* infected breeder flocks (MG) must be segregated in specific setters and hatch machines. Chicks from these flocks need to be processed last and placed together.

**Chick Delivery** - Moffitt loaders, hand trucks, dollies and other equipment associated with the delivery of the processed chicks to the broiler farms should be cleaned daily. Attempts should be made to remove organic matter from the Moffitt loaders, hand trucks, dollies and other equipment between farms.

Chick boxes coming back to the hatchery from a "Yellow Zone" should be disinfected before entering the hatchery. Paperless chick boxes should be cleaned and disinfected twice a week (for example, Wednesday and Saturday). In papered boxes, the paper should be changed at a minimum of twice a week and the boxes washed at least once a week.

**Hatchery Vehicles**

The cab and tires of the egg transport and chick delivery vehicles must be disinfected between farms and the entire truck should be washed and disinfected weekly and upon leaving a "Yellow Zone" before traveling into a "Green Zone". Managers should check for cleanliness of vehicles on both routine and unannounced inspections.

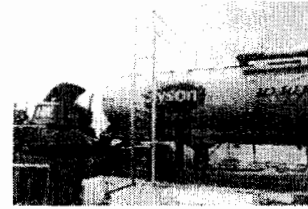
**Feed Mill – Stage Yellow**

Team members must wear clean clothes and footwear when entering the feed mill. Team members should also wash their hands upon entry. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods. A footbath that is maintained daily is required at all entrances to the feed mill.

Feed truck driver must have footwear dedicated for feed delivery. The footwear must be cleaned (to remove ALL organic matter) and sanitized after each farm. When not in use, the footwear should be cleaned and stored in a designated location at the feed mill. Feed truck drivers should never enter the poultry house. Feed tickets should be left in a designated location outside of the poultry house.

The cab and tires of the feed truck should be disinfected upon leaving the farm. Feed trucks must be washed weekly and when obviously dirty. Additionally they will be washed upon leaving a "Yellow Zone" before traveling into a "Green Zone".

No feed left over at the end of a flock will be picked up without first consulting a Tyson veterinarian. The practice of using reclaim trucks to clean up in-house feed spills may be discontinued in Stage Yellow.



Feed mill team members must not own or be associated with any other noncommercial poultry or avian species.

#### **Offices – Stage Yellow (Growout, Plant, Feed Mill, Truck Shop/Service center)**

A footbath that is maintained daily is required at all entrances to these facilities. Service staff should not report to the office on the same day after entering a "Yellow Zone".

Team members who are also Tyson contract growers must change into clean clothes and shoes before entering a Tyson facility and before returning to their poultry farm. Team members who are non-Tyson contract growers must shower and change into clean clothes and shoes before entering a Tyson facility and before returning to their poultry farm.

Because equipment and team members from the shop and service center may potentially have direct contact with live poultry on the farms, it is crucial to keep the shop manager informed with the current biosecurity status in the complex. Specific questions regarding biosecurity may be directed to the Tyson veterinarian. When visiting a farm, shop/service center team members should follow the same biosecurity measures outlined in each section of this manual.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.

Unnecessary sales visits are discouraged. Offsite meeting places with allied support personnel are preferred.

## Operating Practices during Stage Red

Stage Red indicates a unique and serious condition in our operations. One can expect significant cost increases and interruptions in normal procedures while operating in this stage. This level of biosecurity will require the utmost awareness of practices that will minimize the spread and facilitate the elimination of contagious diseases. Verification of biosecurity practices is essential to success. The destruction of flocks may be required as an integral part of the disease eradication process.

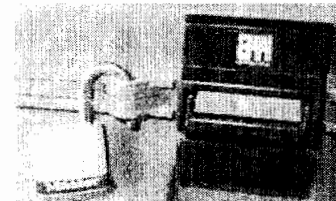


Individuals expected to visit farms must have a pre-prepared Biosecurity Kit and if necessary an Emergency Response Kit. The purpose of the Biosecurity Kit is to minimize cross contamination from unnecessary items brought to the farm. The vehicle must be emptied of all nonessential items before going to the farm. The Biosecurity Kit should be a sealed container that will contain the following items:

- Disposable clothing - coveralls, boots, hair nets, gloves
- Personal protective equipment (PPE) – (goggles, masks, etc) may be necessary in the event of avian influenza or exotic Newcastle disease.
- Hand sanitation items - waterless gels, disinfecting hand wipes and paper towels
- Trash bags - All disposable items must be double bagged and left on the farm.

An Emergency Response Kit may also be needed so that blood and tissues can be collected and sent to reference for a rapid disease conformation. The kit should be prepared and stored in an accessible location. This Emergency Response Kit should contain the following:

- Appropriate sample collection materials including:
  - Blood Collection - blood vials with sealable tops, needles & syringes or scalpels, Whirl-Pak bags.
  - Small biohazard container
  - Tissue Collection - posting kit (knife and scissors) and Whirl-Pak bags
  - Sterile Culture Swabs – (Fisher catalog #B220144)
- Lockable Shipping/Transport Containers – a container that can be sealed by the APHIS veterinarian.
- Markers
- Trash bags – for double bagging samples before leaving the farm. All samples leaving the farm must be double bagged.
- An envelope containing NVSL's (National Veterinary Services Laboratory) phone number, address, and directions to the lab from your complex.



## Broilers – Stage Red

### Broilers – People

Farm visitation is an exception rather than the rule. All visits must be absolutely necessary and must be approved by the live production manager. Communication with growers by telephone will be necessary to avoid contact with positive or suspect farms.



Team members must wear disposable coveralls, hair nets, gloves, and footwear (other PPE may be necessary) when entering a farm. These materials will be in the biosecurity kit mentioned above. Arrangements with the grower should be made so that disposable attire (coveralls, boots, hair nets, etc.) may be left on the farm in an enclosed container.

Team members must wash hands upon entry and before leaving the farm even when using disposable gloves. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods.

Routine procedures (vaccination, weighing, routine bleeding, etc.) must be systematically reviewed with the live production manager and a member of the veterinary staff to assess the necessity of any activity.

Tyson team members must log each farm visit in chronological order.

### **Essential Visitors** (maintenance, utility, temporary farm helpers)



The necessity of all visits must be approved by the live production manager. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds and waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry. All visitors must abide by the 72-hour rule. Essential visitors must at least follow the same biosecurity procedures as team members. Any equipment should be properly cleaned and disinfected before and after the service visit.

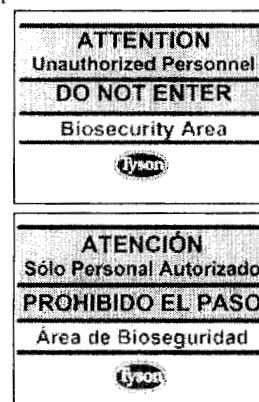
Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.

### **Nonessential Visitors** (family, friends, other visitors)

Nonessential visitors will not be allowed.

### Broilers – Equipment

Any piece of equipment (tools, scalpel blades/ handles, cellular phones, catch pens, etc.) entering the farm must be disinfected prior to entering the farm and again just prior to



leaving the farm. Efforts must be made to minimize the number of possible disease carriers.

- The Biosecurity Kit must be used to minimize the amount of supplies in the cab or the toolbox of the truck.
- Only take into the poultry house or farm items that are absolutely necessary.

### **Broilers – Vehicles**

Service and crew vehicles must be kept clean and orderly truck cabs, floor mats, and tires must be sprayed with disinfectant before and after each visit. Vehicles must be washed with soap and water and disinfected upon leaving a red farm or red zone. Particular attention must be paid to cleaning the interior of the vehicle. Managers should check for cleanliness of vehicles by performing both routine and unannounced inspections.

Vehicles should not be parked near the poultry house. If possible, park at the gate or at least 100 feet from the house.

### **Broilers – Farms**

Entrances to the farm may need to be roped off to discourage unnecessary visitors.

Before depopulation, the veterinarian should be contacted for specific cleanout procedures. Repopulation of the premises will occur after an appropriate downtime is established by the company veterinarian.

**No other poultry shall be kept on the premises.** Contact with poultry on other premises is strictly prohibited. It is recommended that other domesticated species (cattle, pigs, horses, cats, dogs, etc.) be separated from poultry housing. This separation protects the producers, equipment, and facilities, in addition to reducing disease-causing organisms.

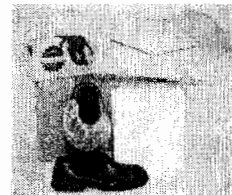
See Dead Bird Disposal section for appropriate methods of mortality disposal.

Communications pertaining to the current disease situation should be disseminated to the growers, potential visitors, and pertinent team members in a timely and routine manner.

## Pullets – Stage Red

### Pullets – People

Farm visitation is an exception rather than the rule. All visits must be absolutely necessary and must be approved by the live production manager. Service staff should schedule visits from youngest to oldest birds. Known positives or suspect flocks must be visited only when necessary and at the end of the day. Communication with growers by telephone will be necessary to avoid contact with positive or suspect farms.



Team members must wear disposable coveralls, hair nets, gloves, and footwear (other PPE may be necessary) when entering a farm. These materials will be in the biosecurity kit mentioned in the introduction to Stage Red. Arrangements with the grower should be made so that disposable attire (coveralls, boots, and hair nets) may be left on the farm in an enclosed container.

Team members must wash hands upon entry and before leaving the farm even when using disposable gloves. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods.

Routine procedures (vaccination, weighing, routine bleeding, etc.) must be systematically reviewed with the live production manager and a member of the veterinary staff to assess the necessity of any activity.

Tyson team members must log each farm visit in chronological order.

### **Essential Visitors** (maintenance, utility, temporary farm helpers)

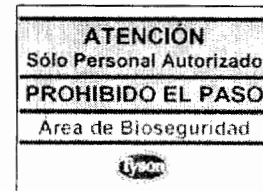
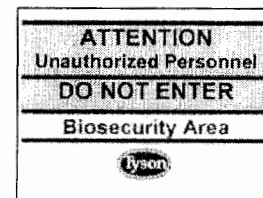


The necessity of all visits must be approved by the live production manager. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds and waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry. All visitors must abide by the 72-hour rule. Essential visitors must at least follow the same biosecurity procedures as team members. Any equipment should be properly cleaned and disinfected before and after the service visit.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.

### **Nonessential Visitors** (family, friends, other visitors)

Nonessential visitors will not be allowed.



### Pullets – Equipment

Clean equipment is essential for handling long-lived birds. All equipment should be made of stainless steel and hard plastic (nonporous) without holes or crevices that will allow organic material to accumulate. Benches, tables, wheels, stools, chairs, fans, drop cords, lights, debeakers, baskets, and equipment trailers should be easily cleaned and not made of wood. All needles must be disposed into an approved biohazard container that is double bagged and disinfected prior to leaving the farm.

- Weighing pens must be provided for each farm.
- Nets must be purchased for each farm and moved with the pullets.
- Cold sterilization with Nolvasan is an acceptable method for sterilization of vaccine guns. Heat sterilization may also be used. **CAUTION:** when heat sterilization is used the O-rings in the vaccinating guns may be damaged, resulting in improper dosing of vaccine.
- All other reusable equipment (scales, catch hooks, etc.) should be thoroughly cleaned and disinfected before leaving the farm.
- Vaccine wells should be rinsed and dried.
- The clean area/dirty area concept must be applied to the vaccination equipment.
- The trailer, when properly cleaned and disinfected, may be used as the clean room.



If birds are allowed to move, all catching equipment, including cages, trailers, loaders, and equipment trailers, must be thoroughly cleaned and disinfected prior to entering and upon leaving the farm.

Designated cages for the breeder/pullet operation are required. This allows for sufficient time for the washing and disinfecting of cages and downtime.

The same biosecurity measures for vaccinating crews apply for pullet moving crews (see above).

### Pullets – Vehicles

Service and crew vehicles must be kept clean and orderly. Truck cabs, floor mats, and tires must be sprayed with disinfectant before and after each visit. Vehicles must be washed with soap and water and disinfected upon leaving a red farm or red zone. Particular attention must be paid to cleaning the interior of the vehicle. Managers should check for cleanliness of vehicles by performing both routine and unannounced inspections.

Vehicles should not be parked near the poultry house. If possible, park at the gate or at least 100 feet from the house.

### **Pullets – Farms**

Entrances to the farm may need to be roped off to discourage unnecessary visitors.

Before depopulation, the veterinarian should be contacted for specific cleanout procedures. Repopulation of the premises will occur after an appropriate downtime is established by the company veterinarian. At this time, any multi-age farms will be placed as a single age facility.

No other poultry shall be kept on the premises. Contact with poultry on other premises is strictly prohibited. It is recommended that other domesticated species (cattle, pigs, horses, cats, dogs, etc.) be separated from poultry housing. This separation protects the producers, equipment, and facilities, in addition to reducing disease-causing organisms.

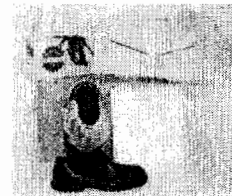
See Dead Bird Disposal section for appropriate methods of mortality disposal.

Communications pertaining to the current disease situation should be disseminated to the growers, potential visitors, and pertinent team members in a timely and routine manner.

## Breeders – Stage Red

### Breeders – People

Farm visitation is an exception rather than the rule. All visits must be absolutely necessary and must be approved by the live production manager. Communication with the growers by telephone will be necessary to avoid contact with positive or suspect farms.



Team members (including egg truck drivers and feed truck drivers) must wear disposable coveralls, hair nets, gloves, and footwear (other PPE may be necessary) when entering a farm. These materials will be in the biosecurity kit mentioned in the introduction to Stage Red. Arrangements with the grower should be made so that disposable attire (coveralls, boots, and hair nets) may be left on the farm in an enclosed container.

Team members must wash hands upon entry and before leaving the farm, even when using disposable gloves. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods.

With certain diseases feed delivery and egg pick up may be discontinued. If feed delivery and egg pick up are continued, the egg truck driver must enter only the workroom or egg room and feed truck drivers must never enter the poultry house. Feed tickets must be left in a designated area outside of the poultry house.

Routine procedures (vaccination, weighing, routine bleeding, etc.) must be systematically reviewed with the live production manager and a member of the veterinary staff to assess the necessity of any activity.

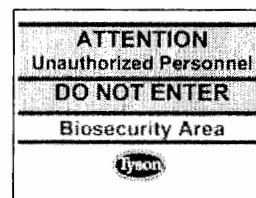
Tyson team members must log each farm visit in chronological order.

### **Essential Visitors** (maintenance, utility, temporary farm helpers)



The necessity of all visits must be approved by the live production manager. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds and waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry. All visitors must abide by the 72-hour rule. Essential visitors must at least follow the same biosecurity procedures as team members. Any equipment should be properly cleaned and disinfected before and after the service visit.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.



**Nonessential Visitors** (family, friends, other visitors)  
Nonessential visitors will not be allowed.

### **Breeders – Equipment**

Farm visitation is an exception rather than the rule. All bird handling must be absolutely necessary and must be approved by the live production manager. Communication with growers by telephone will be necessary to avoid contact with positive or suspect farms. Routine procedures (weighing, routine bleeding, etc.) must be systematically reviewed with the live production manager and a member of the veterinary staff to assess the necessity of the activity.

Clean equipment is essential for handling long-lived birds. All needles should be disposed into an approved biohazard container. Equipment should be cleaned and sanitized between farms in the following manner:

- Weighing pens must be provided for each farm.
- Nets should be provided for each Stage Red farm and disposed of when the flock is removed (unless cleaning and disinfection is approved by the complex veterinarian).
- All other reusable equipment (scales, catch hooks, etc.) should be thoroughly cleaned and disinfected before leaving the farm.

The same biosecurity measures for pullet crews apply for breeder crews (see above).

### **Breeders – Vehicles**

Service and crew vehicles must be kept clean and orderly. Truck cabs, floor mats, and tires must be sprayed with disinfectant before and after each visit. Vehicles must be washed with soap and water and disinfected upon leaving a red farm or red zone. Particular attention must be paid to cleaning the interior of the vehicle. Managers should check for cleanliness of vehicles by performing both routine and unannounced inspections.

Vehicles should not be parked near the poultry house. If possible, park at the gate or at least 100 feet from the house.

With certain diseases feed delivery and egg pick up may be discontinued. If feed delivery and egg pick up are continued, egg trucks and feed trucks will be sprayed (cab, floor mats, and wheels) with disinfectant before entering and leaving a Red Farm. The entire truck will be washed at a designated truck wash facility after leaving a Red Farm or a Red Zone.

### **Breeders – Farms**

Entrances to the farm may need to be roped off to discourage unnecessary visitors.

Before depopulation, the veterinarian should be contacted for specific cleanout procedures. Repopulation of the premises will occur after an appropriate downtime is established by the company veterinarian. At this time, any multi-age farm will be placed as a single age facility.

**No other poultry shall be kept on the premises.** Contact with poultry on other premises is strictly prohibited. It is recommended that other domesticated species (cattle, pigs, horses, cats, dogs, etc.) be separated from poultry housing. This separation protects the producers, equipment, and facilities, in addition to reducing disease-causing organisms.

The use of cats for rodent control will be discontinued on a Stage Red farm.

See Dead Bird Disposal section for appropriate methods of mortality disposal.

Communications pertaining to the current disease situation should be disseminated to the growers, potential visitors, and pertinent team members in a timely and routine manner.

### **Breeders – Catching**

When a severe disease is present, the destruction of certain flocks may be necessary. In this case, equipment used for destruction of the flock should be thoroughly washed and disinfected before it is used again. The use of rental equipment may be warranted. This equipment must also be thoroughly cleaned and disinfected after use.

If birds are sold, all catching equipment, including cages, trailers, loaders, and equipment trailers, should be thoroughly cleaned and disinfected between movements. Contract breeder catchers must be made aware of our biosecurity programs and must adhere to our guidelines. Contractors' equipment should be evaluated for cleanliness at the time of load-out. An off-site area for cleaning and disinfecting contractors' equipment will be required. The cleanliness of contractors' equipment is of paramount importance on multi-age breeder facilities. Contract catchers must be aware that there might be other at risk poultry on the farm. Therefore, contract catchers should enter only the houses in which they are catching.

For further details on catching and disposal, see the Live Haul section of Stage Red.

### **Spike Male - Stage Red**

The practice of using spike males must be discontinued until the threat of disease no longer exists.

## **Other Operating Areas – Stage Red**

### **Dead Bird Disposal – Stage Red**

Tyson approved methods of on-farm disposal of daily mortality is mandatory. Dead birds must be disposed of on the farm. Composting, incineration, or freezers are the Tyson approved methods of dead bird disposal. Disposal of mortality in pits is no longer a Tyson approved method, regardless of local ordinances that may permit it.

Without approval, growers are not allowed to take their daily mortality to rendering plants or livestock landfills. This practice has proven to cause and perpetuate many disease outbreaks. If growers are allowed to utilize livestock landfills or rendering plants, this practice must cease immediately once a severe or serious disease is identified in the area. The complex must have a written protocol that effectively and expeditiously (within 24 hours) communicates this change to all growers when an outbreak occurs. Compliance with this change should also be verified.

In complexes with freezers, the local management must be familiar with the routine activities of the mortality removal vehicle. This understanding will facilitate rapid response in the event of a disease threat. Pick ups on “Stage Red” farms must have veterinary approval. Mortality removal vehicles must be tarped. The truck must be washed and disinfected at the end of each day.

Complexes utilizing incinerators or composting must protect carcasses from domestic or wild animals. Carcasses being held for incineration must be covered.

In the occurrence of a Stage Red event, and the entire flock must be depopulated, consultation with a Tyson veterinarian is required before proceeding.

### **Litter – Stage Red**

In the occurrence of a Stage Red event, government agencies may dictate litter removal practices. Consultation with a Tyson veterinarian is required before proceeding.

### **Live Haul – Stage Red**

In addition to **the information in Stages Green and Yellow**, it may be necessary to dispose of the birds on the farm. If birds are to be destroyed on the farm, it is important to destroy all of the birds. Upon approval, the birds may be buried onsite or hauled to an authorized landfill. Any live birds that are left on the premises may serve as a reservoir for disease. If the birds are to be buried on the farm, a pit should be dug deep enough to insure wild animals and dogs will not uncover the bird carcasses. If the birds are moved off of the farm, they must be scheduled at the end of the day or week and extreme measures should be used to insure that no feathers or organic matter escape from the

transport vehicle. The birds may be sprayed down with water after they are put on the vehicle to minimize flyaway feathers. The disposal vehicle must be securely covered.

All live haul equipment must be thoroughly cleaned and disinfected upon leaving the farm. An additional, detailed cleaning and disinfecting must be completed at the end of the day.

All entries to the farm should be minimized including equipment, vehicles, and people. A pre-prepared Biosecurity Kit that includes disposable coveralls, boots, hair nets, gloves, hand washing materials, and other PPE if necessary may need to be utilized. All of this material must be discarded on the farm. The persons who dispose of the birds or the equipment they use must not come into contact with other live birds for a minimum of 72 hours unless approved by the veterinary staff.

### **Hatchery – Stage Red**

#### **Hatchery - People**

Team members must wear clean clothes and footwear when entering the hatchery. Team members should also wash their hands upon entry. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods. A footbath that is maintained daily is required at all entrances to the hatchery.

Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds, and waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry. Team members with commercial poultry must shower and put on clean clothing before coming to the hatchery and again before returning to their farms.

Chicks will not be delivered into a “Red Zone”.

It is likely that egg pickup will be discontinued from “Red Zone” farms; consult a Tyson veterinarian for specific recommendations. If the eggs are allowed to be picked up the egg truck drivers must wear disposable coveralls, hair nets, gloves, and footwear when entering the farm. These materials will be in the biosecurity kit mentioned in the instruction section of Stage Red. Arrangements with the grower should be made so that disposable attire (coveralls, boots, and hair nets) may be left on the farm in an enclosed container. The egg truck driver must wash his hands upon entry and before leaving the farm, even when using disposable gloves. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods.

The egg truck driver must enter only the workroom or egg room.

Tyson team members should log each farm visit in chronological order.

**Essential Visitors (maintenance, utility, deliveries)**

These people must at least follow the same clothing and footwear procedures as team members. Any equipment should be properly cleaned and disinfected before and after service visits. Contact with other noncommercial poultry or avian species (backyard chickens, game fowl, parrots, caged birds, waterfowl, etc.) is strictly prohibited for anyone in contact with Tyson Foods, Inc. poultry.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.

**Nonessential Visitors (tours or other visitors)**

Non essential visits are not allowed.

**Hatchery Equipment**

**Egg Transport** - It is likely that egg pickup will be discontinued from "Red Zone" farms, consult a Tyson veterinarian for specific recommendations. If they are allowed to be picked up, farm racks, egg flats, paper commercial egg supplies, and other associated articles used in the delivery or shipping of eggs from the breeder farm should be properly cleaned before delivery to the farm.

Eggs trucks should be fogged with an approved disinfectant before unloading eggs or equipment from a "Stage Red" farm.

Eggs from *Mycoplasma sp.* infected breeder flocks (MG) must be segregated in specific setters and hatch machines. Chicks from these flocks need to be processed last and placed together.

**Chick Delivery** – Chicks will not be delivered into a "Red Zone". Consult your Tyson Veterinarian for specific when moving chicks between complexes.

**Hatchery Vehicles**

Before entering and leaving a "Stage Red" farm, egg trucks will be sprayed (cab, floor mats, and wheels) with disinfectant. The entire truck will be washed at a designated truck wash facility before returning to any farm and at the end of the day.

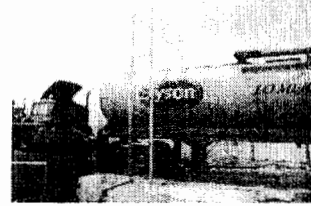
**Feed Mill – Stage Red**

Immediately upon arrival at the farm, the feed truck driver must put on disposable coveralls, hair nets, gloves, and footwear. These materials will be in the biosecurity kit mentioned in the introduction to Stage Red. Arrangements with the grower should be made so that disposable attire (coveralls, boots, and hair nets) may be left on the farm in an enclosed container. The feed truck driver must wash his hands upon entry and before

leaving the farm, even when using disposable gloves. Waterless gels, disinfecting hand wipes, or soap and water are all acceptable methods.

Feed truck drivers must never enter the poultry house. Feed tickets must be left in a designated area outside of the poultry house.

Feed trucks must be kept clean and orderly. Particular attention must be paid to cleaning the interior of the vehicle. Before entering and leaving a Red Farm, feed trucks will be sprayed (cab, floor mats, and wheels) with disinfectant. The entire truck will be washed at a designated truck wash facility before returning to any farm and at the end of the day. Managers should check for cleanliness of vehicles by performing both routine and unannounced inspections.



No feed left over at the end of a flock will be picked up.

Tyson team members must log each farm visit in chronological order.

#### **Offices – Stage Red (Growout, Plant, Feed Mill, Truck Shop/Service center)**

A footbath that is maintained daily is required at all entrances to these facilities. Service staff should not report to the office on the same day after entering a “Red Zone”.

Team members who are also Tyson contract growers and Non Tyson contract Growers must shower and change into clean clothes and shoes before entering a Tyson facility and before returning to their poultry farm.

No person having had contact with birds on a farm in Stage Red within 24 hours should be allowed to enter areas or facilities within the complex unless approved by the Live Production Manager. Furthermore, these persons are not to visit any other poultry operations for a minimum of 72 hours.

Because equipment and team members from the shop and service center may potentially have direct contact with live poultry on the farms, it is crucial to keep the shop manager informed with the current biosecurity status in the complex. Specific questions regarding biosecurity may be directed to the Tyson veterinarian. When visiting a farm, shop/service center team members should follow the same biosecurity measures outlined in each section of this manual.

Each complex should maintain a current list of ALL essential visitors. In the event of a change in biosecurity status, these people must be informed of precautions needed upon entering/exiting a farm.

Unnecessary sales visits are prohibited. Offsite meeting places with allied support personnel are allowed absolutely necessary.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,  
W.A. DREW EDMONDSON, in his  
capacity as ATTORNEY GENERAL  
OF THE STATE OF OKLAHOMA,  
et al.

Plaintiffs,

V.

TYSON FOODS, INC., et al.,

Defendants.

TYSON FOODS, INC., et al.,

Third Party Plaintiffs,

V.

CITY OF TAHLEQUAH, et al.,

Third Party Defendants,

No. 05-CV-329-TCK-SAJ

TRANSCRIPT OF PROCEEDINGS

HAD ON MARCH 23, 2006

MOTION HEARING

BEFORE THE HONORABLE SAM A. JOYNER, Magistrate Judge

Glen R. Dorrough  
UNITED STATES COURT REPORTER

EXHIBIT

4

## 1 APPEARANCES:

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Owens Law Firm, PC  
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Tulsa, Oklahoma 74119

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PROCEEDINGS

March 23, 2006

THE CLERK: 05-CV-329-TCK-SAJ, State of Oklahoma et  
al., versus Tyson Foods, et al. Will counsel make their  
appearance for the record, please.

1 MR. BULLOCK: Louis Bullock for the State of Oklahoma.

2 THE COURT: Thank you, Mr. Bullock.

3 MR. EDMONDSON: Drew Edmondson for the State of  
4 Oklahoma.

5 THE COURT: Thank you.

6 MR. RIGGS: David Riggs for the State of Oklahoma.

7 MR. BAKER: Fred Baker for the State of Oklahoma.

8 MR. NANCE: Bob Nance for the State of Oklahoma.

9 MS. BURCH: Kelly Burch, State of Oklahoma.

10 MR. GARREN: And Richard Garren for the State of  
11 Oklahoma.

12 THE COURT: Okay. Thank you. The other side, Mr.  
13 Tucker.

14 MR. TUCKER: John Tucker for Cargill, Your Honor.

15 MR. JANTZEN: Stephen Jantzen appearing on behalf of  
16 the various Tyson entities.

17 THE COURT: Okay.

18 MR. LAY: Tom Lay, Your Honor, appearing on behalf of  
19 Willowbrook Foods.

20 MR. MCDANIEL: Good morning, Your Honor, Scott  
21 McDaniel for Peterson Farms and also with me are Nicole  
22 Longwell and Philip Hixon.

23 MR. GEORGE: Robert George appearing on behalf of the  
24 Tyson defendants, Your Honor.

25 THE COURT: Okay.

1 THE CLERK: John Elrod for Simmons, Your Honor.

2 THE COURT: Mr. Elrod.

3 MR. REDEMANN: Robert Redemann for Cal-Maine.

4 MR. GRAVES: James Graves along with George Owens for  
5 the George's defendants.

6 THE COURT: All right, is that everyone? Thank you,  
7 counsel, I appreciate you making those appearances of record.  
8 At least the first time it helps me to go through and put a  
9 face with a name.

10 Welcome to today's hearing. I appreciate you mushing  
11 through the mud and the snow if that was your burden this  
12 morning. On this side of the bench we have Linda Collins, the  
13 courtroom deputy, Glen Dorrough the court reporter, and we need  
14 to be sensitive to his needs as we proceed, and Tammy Barrett  
15 is the law clerk that has been working on this case.

16 It's good to see the Attorney General, that we can  
17 have him with us today. It's good to see that he does some of  
18 his own lawyering on occasion. I'm sure that's not an  
19 opportunity you get as much as you wish, but it's good to have  
20 you and other counsel here as well.

21 I suppose we should on the record defer any chicken  
22 jokes so nobody will be tempted as we proceed. I guess there  
23 is one joke I've got to tell, maybe to the Attorney  
24 General. Everybody else has been here so much in connection  
25 with the chicken cases and in CFS as well. This is very

1 putting a pipe into that tube, you can then suck up the  
2 groundwater, a sample of the groundwater. And then what we  
3 will have to sort out -- and I know there will be a fight over  
4 it -- what we would like to do is to establish some small  
5 places in some of these fields where we could come back  
6 repeatedly and take groundwater samples. That's a fight that  
7 we believe is for another day but we certainly can discuss  
8 that.

9 Those are the things that we want to do.

10 THE COURT: Your protocol, I don't want to interrupt  
11 you, but when you are through talking about the protocol I  
12 thought we needed to visit for a few moments.

13 MR. BULLOCK: Okay.

14 THE COURT: Obviously, this protocol is going to  
15 become very important in this whole process, the specific, and  
16 the devil is in the details. You've got four different areas  
17 in which you want to sample. The first deals with poultry  
18 houses only. The last three deal with fields on which litter  
19 has been spread; is that correct?

20 MR. BULLOCK: Yes.

21 THE COURT: Okay. How are you going to know which  
22 fields have had litter spread upon them?

23 MR. BULLOCK: Well, there's two ways that we can do  
24 that. One way is the way that we have done it in the past and  
25 that is by observation, by people out in the field who see it

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.

PLAINTIFFS

v.

CASE NO.: 4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al.

DEFENDANTS

AFFIDAVIT OF DANNY PARTAIN

I, Danny Partain, having been duly sworn, under oath, state that the following facts are true and correct to the best of my knowledge, information, and belief:

1. I am an individual over the age of eighteen (18) years. The facts set forth herein are based upon my personal knowledge. I would be willing and able to testify thereto if and when called upon to do so.

2. From 1988 until the present, I have been involved in the operation of poultry farms on the property which is the subject of Plaintiff's subpoena. From 1998 to 2004, I was an employee of Tyson Foods, Inc. involved in the operation of the company owned farms known as Complexes 1, 2, and 3 on the subject property. In February 21, 2004, I became an employee of Green Country Farms when Green Country Farms agreed to lease the property from Tyson and to enter into a contract for the purpose of rearing poultry on that property for Tyson. Since February 21, 2004 I have continued to be involved in the management by Green Country Farms of the poultry rearing occurring on the property which is the subject of the subpoena.

3. I am unaware of the existence of any "waste applied" fields on the subject property as I understand the meaning of that term in Plaintiff's subpoena.

4. To the best of my knowledge, information, and recollection, poultry litter has not been applied to the subject property from 1988 to the present.

4836-3523-1488.1



5. From 1988 to the present, poultry litter generated from farms on the subject property has been removed from the property rather than being applied on the subject property.

Danny Partain  
Danny Partain

STATE OF OKLAHOMA           )  
  ) ss.  
COUNTY OF ADAIR           )

SUBSCRIBED AND SWORN to before me, a notary public, on this 2nd day of May, 2006.

Tammy Littlejohn  
NOTARY PUBLIC

My Commission Expires:

Dec. 16<sup>th</sup> 2006

